Court File No.: C56905

COURT OF APPEAL FOR ONTARIO

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

APPEAL BOOK AND COMPENDIUM OF THE APPELLANT

(Appeal from the order of Justice Robert Smith, dated March 13, 2013)

May 9, 2013

Denis Rancourt
(Appellant)

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COURT OF APPEAL FOR ONTARIO

Tab 2

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

NOTICE OF APPEAL

(Appeal from the order of Justice Robert Smith, dated March 13, 2013)

April 12, 2013

Denis Rancourt
(Appellant)

THE DEFENDANT, DR. DENIS RANCOURT, APPEALS to the Court of Appeal from the order (Reasons For Decision On The Champerty Motion) of Mr. Justice Robert Smith, dated March 13, 2013, made at Ottawa, Ontario. Smith J. dismissed the defendant's motion to stay or dismiss the action on the grounds of abuse of process (maintenance and champerty).

THE APPELLANT ASKS that the judgment be set aside and a judgment be granted as follows:

1. Ordering re-hearing of the entire defendant's motion ("champerty motion"), including the defendant's refusals motion in the champerty motion, with the champerty motion treated as a trial;

2. In the alternative, granting the defendant's champerty motion to dismiss the action;

3. In the alternative, granting the defendant's champerty motion to terminate the champertous maintenance and forbid sharing in the proceeds of the action;

<u>Costs and other</u>

4. The costs of the motions set aside by this Honourable Court;

5. The costs of this appeal on an appropriate scale;

6. Such further and other relief as the appellant may advise and this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows:

OVERVIEW

1. This appeal raises fundamental questions about:
   (a) a litigant's right to a judicial determination of apparent bias in a process leading to a final decision;
   (b) what constitutes a fair hearing regarding time limitation for a self-represented litigant in a motion to end the action;
   (c) the tests and factors for determining maintenance and/or champerty, where non-party funding is not needed for access to justice by the litigant;
   (d) a motion judge's duty in determining relevancy and admissibility of the evidence, in a motion that can end the action; and
   (e) the test for directing trial of an issue in an abuse of process motion to end the action.

2. The appellant has, since 2007, published a blog (the "U of O Watch" blog) which is critical of the University of Ottawa, and of its management, including the university president Allan Rock. The blog articles, based in documentary sources, are direct, and carry sting.

3. The appellant was a tenured Full Professor of physics at the University of Ottawa until 2009 when he was dismissed by Mr. Rock. The dismissal is being challenged in on-going binding labour arbitration by the appellant's union, for breach of the appellant's academic freedom.

4. In 2011, the respondent Ms. Joanne St. Lewis, a tenured Assistant Professor in law at the University of Ottawa, filed a $1 million defamation lawsuit against the appellant for one of his 2011 blog posts in which the appellant states that access to information documents suggest that Professor St. Lewis acted like the house negro of Mr. Rock, where the term "house negro" was explicitly defined according to Malcolm X's iconic 1963 speech "Message to the Grass Roots".

5. Months into the action, the defendant learned that the University of Ottawa is entirely funding the respondent's litigation, in which the Statement of Claim foresees sharing in the proceeds of the action with the University of Ottawa. The appellant filed a motion to stay or dismiss the action for abuse of process, based on maintenance and champerty ("champerty motion"). Next, the action was put into case management by consent, and at the first case conference the University was made a responding party in the champerty motion.

6. The appellant cross-examined several affiants and witnesses for his champerty motion, including the president, the dean of the law faculty, and the chair of the board of governors of the University of Ottawa. This was followed by an appellant's refusals and productions motion resulting from the cross-examinations.

7. During the refusals motion hearings, the appellant discovered that the refusals motions and case management judge, Mr. Justice Robert Beaudoin, had a financial contract with the University of Ottawa, and a personal interest in the BLG law firm which represented the University. The appellant sought a judicial determination of reasonable apprehension of bias: Beaudoin J. recused himself for a given reason other than apparent bias, and stated that he could not be impartial moving forward. The defendant sought a judicial determination of apparent bias through motions, but the lower court circumvented providing any judicial determination of reasonable apprehension of bias of Beaudoin J.

8. A new case management judge was named, Mr. Justice Robert Smith, who continued the refusals motion(s), and heard and determined the champerty motion. Smith J. in the impugned decision relies extensively on a refusals motion decision of Beaudoin J., which was released after Beaudeau J. recused himself by finding that he could not be impartial moving forward.

REASONABLE APPREHENSION OF BIAS

9. The first ground for appeal is reasonable apprehension of bias. The appellant asks that this Honourable Court find that there is apparent bias of Mr. Justice Beaudoin, and that, consequently, the entire champerty motion and refusals motion must be re-heard *de novo*, including the case management decisions of Beaudoin J. regarding imposed cross-examinations scheduling constraints.

10. The cogent evidence supporting a reasonable apprehension of bias includes :

(a) A terms of reference contract for a law faculty scholarship endowment fund between Beaudoin J. and the University of Ottawa, an intervening party;

(b) A boardroom named in honour of Beaudoin J.'s deceased son, at the law firm representing the University of Ottawa;

(c) A newspaper article quoting Beaudoin J. expressing the personal and emotional importance to him of the said scholarship fund and of the said boardroom honour;

(d) The fact that, at the hearing where the bias concern was first raised, Beaudoin J. threatened the applicant with contempt of court if the applicant continued to advance the concern.

11. The cogent evidence supporting an appearance of bias occurred in circumstances where:

(a) Beaudoin J. had not disclosed his ties to the intervener, the University of Ottawa, and to its counsel; and

(b) the champerty motion in issue alleged bad faith of the University, such that the decisions of Beaudoin J. in the champerty motion could impact the reputation of the University and its scholarships; and

(c) consequently, there is a reasonable appearance that Beaudoin J. had a shared interest in the outcome of the champerty motion.

12. In the alternative, the order of Beaudoin J., on the part of the refusals motion decided by him, is invalid because it was made after Beaudoin J. recused himself by finding that he

could not be impartial regarding the appellant moving forward, which itself creates an inescapable appearance of bias.

13. This August 2, 2012 order of Beaudoin J. has two deleterious effects:

(a) it deprives the appellant of the answers and documents from the the refused questions of the witnesses; and

(b) it makes a determination of a limited field of relevancy for evidence in the champerty motion, which Smith J. adopted in his determination of the champerty motion, and in deciding on admissibility of affidavits.

DEFENDANT WAS DEPRIVED OF A FAIR HEARING

14. Smith J. erred by depriving the defendant of adequate time to make his oral arguments.

15. Smith J. erred by imposing a strict time management regiment, at the hearing of a motion to end the action, upon an inexperienced non-lawyer self-represented litigant who prepared all his own motion materials, and did not receive any legal help, while being opposed by two of Canada's leading lawyers who have both represented former or actual prime ministers of Canada.

16. Smith J. erred by imposing a strict time limit of one day for the hearing, over the objections and protest of the defendant, while not adjusting this time limit to two new preliminary issues which needed to be heard:

(a) A defendant's request to adjourn in order to allow a notice for leave to appeal to the Supreme Court of Canada to be filed, a matter that was ruled on in one hour; and

(b) A defendant's request that the main motion be directed into trial of an issue, a matter which consumed the defendant's remaining allotted time.

17. Smith J. erred by refusing to allow the defendant time for an oral argument regarding admissibility of an affidavit that was submitted after cross-examinations, and by imposing

that the entire hearing of the motion would be completed in the absence of a ruling on admissibility of the affidavits.

18. Smith J. erred by refusing to allow the defendant time to make his oral argument regarding the main motion, while only being allowed a short reply to the submissions of the others parties, thereby depriving the defendant of natural justice and procedural fairness.

19. Smith J. erred by not duly considering the prejudice against the self-represented defendant that could arise from being deprived of his oral arguments, and by not allowing the defendant to make submissions about the said prejudice.

20. Smith J. erred by refusing to rule on the question of trial of an issue prior to continuing the main motion, thereby creating a fait accompli.

JUDGE MISDIRECTED HIMSELF ON THE LAW OF MAINTENANCE AND CHAMPERTY

21. Smith J. erred by not following the binding Supreme Court of Canada definition of maintenance as consisting of intervening officiously or improperly, and as requiring a valid excuse, such as charity. A dictionary definition of officiously is "Marked by excessive eagerness in offering unwanted services or advice to others". Smith J. failed to consider officiousness, nor was a test for officiousness applied. Instead, the judge conflated officiousness with impropriety.

22. Smith J. erred by failing to consider, as argued by the defendant, that maintenance alone, without champerty, can give rise to an abuse of process which can end an action.

23. Smith J. erred by failing to consider the maintained litigant's prior intent to litigate, which is a determinative factor in finding officious interference, and maintenance. Smith J. said nothing about the evidence that the plaintiff did not, for years, have an intent to litigate until after she was eagerly offered and guaranteed unlimited funding for the lawsuit, in April 2011.

24. Smith J. erred by failing to turn his attention to the proposition that, beyond "prior intent", the maintained litigant's motives for agreeing to being funded and/or for seeking funding can be improper, and that this is a determinative factor in finding maintenance. Smith J. said nothing about the evidence that the maintained litigant's (the plaintiff's) motives were improper.

25. Smith J. erred by using a meaning of the term "trafficking in litigation" which is too limited for the factual context, and which is not consistent with the body of relevant case law. The judge's adopted meaning of "trafficking in litigation" would render the Ontario statute *An Act respecting Champerty*, and the principle of champerty itself, meaningless in most factual circumstances, including where there is officious interference (maintenance) and sharing of the proceeds.

26. Smith J. erred by failing to consider that if maintenance is established, and there is a sharing of the proceeds of the litigation, then there is champerty, even if the maintainer's dominant motive for the maintenance is not the sharing in the proceeds.

27. Smith J. erred by failing to apply the Ontario statute *An Act respecting Champerty*, which stipulates "All champertous agreements are forbidden, and invalid."

28. Smith J. erred by not considering or determining the defendant's requested order: "Alternatively, that the champertous maintenance be ordered terminated, with reimbursement of funds from the plaintiff to the University, and that the punitive damages paragraphs in the Statement of Claim be struck out." The said punitive damages paragraphs stipulate that half of the punitive damages will be given to the University.

JUDGE MISDIRECTED HIMSELF ON ADMISSIBILITY OF EVIDENCE

29. Smith J. erred by adopting Beaudoin J.'s reasons, regarding relevancy for upholding refusals in the refusals motion, as defining relevancy for his purpose in determining evidence admissibility in the main motion. Smith J. was not bound by Beaudoin J.'s reasons for judging refusals, but rather had a duty to determine relevancy based on the

pleadings in the main motion before him, which in a motion includes all the supporting affidavits.

30. In adopting Beaudoin J.'s reasons regarding relevancy, Smith J. erred by failing to recognize that:

(a) It is the order of the Court which is binding, not the reasons assigned for making it; and

(b) Beaudoin J. did not intend to bind the hand of the judge hearing the main motion regarding admissibility of evidence, and did not have the jurisdiction to usurp the function of the judge hearing the main motion.

31. Smith J. erred by not applying all the factors needed to determine maintenance and champerty. Namely, the judge was bound to a detailed examination of motives, of both the maintainer, and the maintained litigant.

32. Smith J. erred by failing to consider documentary evidence not in the affidavits, but in the motion record, and which had been provided by a witness pursuant to a Notice of Examination. The test for admissibility must be applied, and a self-represented litigant should not be deprived of evidence for a technicality. The judge said nothing about the existence of this evidence.

33. Smith J. erred by failing to consider evidence in the cross-examination transcript of dean of law Mr. Feldthusen, which helped the appellant's case, and had been argued by the appellant. The judge said nothing about the existence of this evidence.

34. Smith J. erred by failing to consider evidence in the cross-examination transcript chair of the Board of Governors Mr. Giroux, which helped the appellant's case, and had been argued by the appellant. The judge said nothing about the existence of this evidence.

35. Smith J. erred by failing to consider the documentary evidence (several documents) that the plaintiff did not have a prior intent to litigate prior to being offered complete funding

by university president Mr. Rock on April 15, 2011. The judge said nothing about the existence of this evidence, which had been presented by the appellant.

36. Smith J. erred by finding the entire April 23, 2012 affidavit inadmissible which contained exhibits at cross-examination which had been identified by the witness (Mr. Rock), thereby effectively finding those exhibits inadmissible, without making any mention that the said exhibits were actually in evidence.

37. Smith J. erred by finding the entire April 23, 2012 affidavit inadmissible which contained documents provided by the plaintiff in discovery (Schedule A documents), thereby effectively finding those documents inadmissible, without applying the test for admissibility in motions of evidence provided in discovery, and without considering that there could be no prejudice to the plaintiff, and that a self-represented litigant should not be deprived of evidence based on a technicality.

38. In particular, two documents from discovery are of central importance to a determination of the plaintiff's prior intent and motives regarding maintenance and abuse of process:

(a) An email sent by the plaintiff to president Mr. Rock, about the 2011 blogpost complained of, which states: "Do let me know if you want me to do anything. I will be happy to fit into whatever strategy you decide but until then I intend to make no comment."; and

(b) An email from a Ms. Tarachansky to the plaintiff, received by the plaintiff **prior to** the plaintiff's email to Mr. Rock, which has Ms. Tarachanky stating about the said 2011 blogpost complained of: "… he refers to you in derogatory and racist language is really disturbing … I'm sorry that you have been forced to endure such a disgusting attack."

39. Smith J. erred by not recognizing that, since one of the two supplementary affidavits (the April 23, 2012 affidavit) had been judicially approved to be submitted, the plaintiff had the onus to show that it was not admissible, and erred by finding it not admissible.

40. Smith J. erred by finding, contrary to all the documentary and sworn evidence before him, that:

    (a) "Rancourt has not provided any reasonable or adequate explanation for why the evidence … was not included in his affidavit and materials filed in January 2012"; and

    (b) "these materials were in his possession before he cross-examined President Rock".

41. Smith J. erred by not admitting the evidence submitted by the applicant.

42. Smith J. erred by misdirecting himself on the nature of the evidence contained in the two supplementary affidavits, in finding that "even if [the affidavits] were admissible they do not constitute relevant evidence of an improper motive of the University but are mere speculation", in particular since:

    (a) much of the evidence is about the improper motive (prior intent) of the maintained litigant, the plaintiff, not about the motive of Mr. Rock or the University; and

    (b) the documentary evidence contains more than negative expression, but also an email exchange between university president Mr. Rock and the other main player dean of law Mr. Feldthusen explicitly showing a conspiracy to harm the appellant.

JUDGE ERRED BY FAILING TO DIRECT TRIAL OF AN ISSUE

43. Smith J. erred by incorrectly applying the test for trial of an issue, and/or by applying the wrong test. There is no reason for a litigant to request or the motion judge to direct a trial of an issue on a motion prior to the evidence being known and admitted.

44. Smith J. erred by misdirecting himself on the evidence and/or failing to consider material evidence, and by failing to find that there is material conflict in the evidence which requires a trial of an issue.

45. Examples of material conflicts in the evidence include the following.

46. Conflict in the evidence:

(a) Both the plaintiff and Mr. Rock swear that the plaintiff expressed a firm intent to make a lawsuit against the defendant at an April 15, 2011 meeting, and that funding for the lawsuit was granted by Mr. Rock at the said meeting; whereas

(b) Dean of law Mr. Feldthusen swore, spontaneously and without looking at his affidavit, that it "would be an over-estimate" that "Professor St. Lewis by this time [April 15, 2011 meeting] had decided firmly that she was going to litigate this matter", and swore that no firm decision for funding was communicated by Mr. Rock at the said April 15, 2011 meeting; and, whereas

(c) In her affidavit, the plaintiff swore that she made the decision to litigate "as soon as I read the Defendant's "house negro" article"; and

(d) The plaintiff in cross-examination swore that she first read the said "house negro" article after her counsel Mr. Dearden instructed her to do so, and that such instruction came after April 15, 2011; where

(e) Smith J. said nothing about this pivotal conflict of admitted evidence in his Reasons, despite being strenuously argued by the defendant.

47. Conflict in the evidence:

(a) President Mr. Rock testified that his motives, for funding the maintained litigant's defamation lawsuit against the defendant, are proper; whereas

(b) A five-part email exchange shows dean of law Mr. Feldthusen, who urged that the University must fund the lawsuit and who suggested the counsel for the plaintiff, and Mr. Rock together conspiring to find an actor(s) to "circulate a response to this fiction … It is important for the members of the community to know that: 1. Far from having had "an impeccable pedagogic career", Rancourt has …"; and where

(c) Smith J. said nothing about this email exchange, authenticated by Mr. Rock as an exhibit in his cross-examination, in the impugned Reasons, despite being strenuously argued by the defendant.

48. Conflict in the evidence:

(a) Mr. Rock swore in testimony that the defendant's U of O Watch blogposts have no effect on him and that he probably has never read the blog; whereas

(b) An email from Mr. Rock to his communications staff refers to the writings of the defendant as "toxic rants" and asks how to address media which pick up these "toxic rants"; where

(c) Smith J. said nothing specific about the "toxic rants" email, which was authenticated by Mr. Rock as an exhibit at his cross-examination, despite its relevance having been strenuously argued by the defendant.

49. Conflict in the evidence:

(a) The plaintiff swears to having developed a firm conviction to sue the defendant, immediately prior to securing complete funding for her lawsuit from the University on April 15, 2011; whereas

(b) The plaintiff was aware in 2008 of the article on the U of O Watch blog which made all the same professional and personal criticisms of the plaintiff as the 2011 blog article complained off; where

(c) Smith J. said nothing about the admitted evidence consisting of the 2008 blog article in his Reasons, despite this being strenuously argued by the defendant.

NOTE: INTENT TO FILE A MOTION FOR FRESH EVIDENCE

50. The appellant intends to file a motion for fresh evidence to this Honourable Court.

51. It is anticipated that the fresh evidence will include evidence that the plaintiff's funded lawsuit is aimed solely at targeting the defendant, whereas several over persons have made the same, other, and similar more widely published statements about the plaintiff.

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

Tab 6

THE HONOURABLE JUSTICE ROBERT J. SMITH) Monday, the 13th day of December, 2012

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

- and –

THE UNIVERSITY OF OTTAWA

Rule 37 Affected Party

ORDER

THIS MOTION, made by the Defendant Denis Rancourt seeking an Order dismissing or staying this libel action as an abuse of process on the basis that the agreement of the University of Ottawa to pay the costs of Professor St. Lewis' libel action constitutes champerty and maintenance, was heard orally this day at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

ON READING of the Motion Records and Facta filed by the Plaintiff, the Defendant and the University of Ottawa, and upon hearing the submissions of counsel for the Plaintiff and the University of Ottawa, and submissions of the Defendant appearing in person;

THIS COURT ORDERS that the Defendant's motion to stay or dismiss this libel action is dismissed.

THIS COURT ORDERS that the Plaintiff and the University of Ottawa shall have 15 days from March 13, 2013 to provide submissions in respect of costs (until March 28, 2013), the

Defendant shall have until ~~April 30~~ July 15, 2013 to respond, and the Plaintiff and the University of Ottawa shall have 10 further days to reply (until ~~May 10~~ July 25, 2013).

The Honourable Justice Robert J. Smith

ENTERED AT OTTAWA
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ON/LE MAY MAI 0 6 2013

DOCUMENT # 1517
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

Joanne St. Lewis

Plaintiff

- and -

Denis Rancourt

Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

ORDER

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CITATION: St. Lewis v. Rancourt, 2013 ONSC 1564
COURT FILE NO.: 11-51657
DATE: 2013/03/13

ONTARIO

Tab 7

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Joanne St. Lewis	)	Richard G. Dearden / Anastasia Semenova, for the Plaintiff
Plaintiff	)	
	)	
– and –	)	
	)	
Denis Rancourt	)	Denis Rancourt, self-represented
Defendant	)	
	)	
	)	
University of Ottawa	)	Peter K. Doody, for the University of Ottawa
	)	
	)	
Rule 37 Affected Party	)	
	)	
	)	**HEARD:** December 13, 2012

REASONS FOR DECISION ON THE CHAMPERTY MOTION

R. SMITH J.

Overview

[1] Denis Rancourt ("Rancourt") seeks an order dismissing or staying Joanne St. Lewis' ("St. Lewis") defamation action against him as an abuse of process, because he alleges that the University of Ottawa's agreement to pay her legal costs constitutes champerty and maintenance.

[2] The defendant Rancourt is a former Physics Professor at the University of Ottawa (the "University"). He published a blog on February 11, 2011 in which he referred to St. Lewis as "Allan Rock's house negro".

[3] St. Lewis is an Assistant Law Professor employed by the University who teaches in the area of equality rights, and has a reputation in anti-racism. She became a tenured professor in 2001. She is also a Black woman.

[4] In the fall of 2008, St. Lewis was asked by President Rock to prepare an evaluation of the University Student Appeal Centre‟s report that had alleged systemic racism at the University. In her report, St. Lewis concluded that there was no systemic racism at the University and that the University‟s academic fraud process was well founded.

[5] In April 2011, shortly after St. Lewis became aware of Rancourt‟s blog referring to her as "Allan Rock‟s house negro", she met with Dean Feldthusen to advise him that she had to sue Rancourt for libel. St. Lewis and Dean Feldthusen then met with University President Allan Rock to request that the University pay for her legal costs for her libel action against Rancourt. President Rock agreed to pay St. Lewis‟ legal costs because the allegedly defamatory comments in Rancourt‟s blog were related to the report which St. Lewis had prepared as an employee of the University and at the request of the University.

[6] On June 23, 2011, St. Lewis issued a statement of claim against Rancourt claiming $1 million in damages for defamation.

Issues

[7] The following issues must be decided:

(1) Should Rancourt‟s affidavits, affirmed on April 23 and May 23, 2012, be admitted into evidence on the champerty motion?

(2) Should a trial of an issue be ordered?

(3) Does the University‟s agreement to pay for St. Lewis‟ legal costs of her defamation action against Rancourt constitute champerty and maintenance?

Background Facts

[8] Rancourt is a former Physics Professor at the University of Ottawa. He publishes a blog entitled "U of O Watch". On February 11, 2011, Rancourt published an article entitled "Did Professor St. Lewis Act as Allan Rock‟s House Negro?"

[9] St. Lewis is an Assistant Professor in the Common Law Section of the Faculty of Law at the University of Ottawa. She was awarded full tenure in 2001. St. Lewis co-chaired the Canadian Bar Association working group on racial equality and authored the report titled „Virtual Justice, Systemic Racism in the Canadian Legal Profession‟. St. Lewis has also taught a number of courses that examined issues of racism in a variety of contexts and has an established reputation as an expert in anti-racism and critical race theory as an academic public speaker and facilitator.

[10] In November 2008, the Student Appeal Centre ("SAC") published its 2008 Annual Report entitled "Mistreatment of Students, Unfair Practices and Systemic Racism at the University of Ottawa". Shortly thereafter, University President Allan Rock asked St. Lewis, in her capacity as a Professor of Law and as the Director of the Human Rights Research and Education Centre, to provide an assessment of whether the allegations of systemic racism in the

University‟s Academic Fraud Process were well founded. St. Lewis accepted the President‟s request and conducted an evaluation of the SAC‟s 2008 Annual Report.

[11] St. Lewis completed her final report entitled "Evaluation Report of the Student Appeal Centre 2008 Annual Report" which was released on November 15, 2008. In her report, St. Lewis concluded that there was no systemic racism at the University. Rancourt was not mentioned in her report.

[12] St. Lewis alleges that a number of the statements contained Rancourt‟s February 11, 2011 blog are false, defamatory and racist.

[13] On May 18, 2011, Rancourt published a further statement in response to a Notice of Libel he received which St. Lewis also alleges contains false, defamatory, and racist statements about her.

[14] On or about mid-April of 2011, the plaintiff became aware that Rancourt had referred to her as a „House Negro‟ of the University of Ottawa President Allan Rock. St. Lewis met with Dean Bruce Feldthusen to advise him that she had to sue Rancourt for damages to her personal and professional reputation. At the meeting, Dean Feldthusen and St. Lewis decided to meet with the University of Ottawa President Allan Rock to advise him about her defamation action and to request that the University pay for the legal costs of her libel action. The meeting was held on April 15, 2011 between President Rock, St. Lewis and Dean Feldthusen at which time President Rock, on behalf of the University, agreed to fund the legal costs of St. Lewis‟ libel action against Rancourt.

[15] The University gave the following two reasons for funding St. Lewis‟ libel action:

(a) Rancourt‟s defamatory remarks about St. Lewis were occasioned by work, which she had undertaken at the request of the University and in the course of her duties and responsibilities as an employee of the University; and

(b) Rancourt‟s racist attack upon St. Lewis took the case out of the ordinary and created a moral obligation for the University to provide support for a professor in defence of her reputation.

[16] The University of Ottawa is an educational institution governed by statute and mandated to perform the public role of education and research. The University acknowledges that it receives some Government funding.

[17] In her statement of claim, St. Lewis unilaterally proposed to give half of the punitive damages awarded to the Danny Grover Routes to Freedom Graduate Law Student Scholarship Fund. The fund is administered by the University.

Issue #1 **Should Rancourt's affidavits, affirmed on April 23 and May 23, 2012, be admitted into evidence on the champerty motion?**

Facts related to the admissibility of the April 23, 2012 and May 23, 2012 affidavits

[18] On January 25, 2012, Rancourt served this notice of motion seeking an order that the action be stayed or dismissed on the ground that the action is vexatious or otherwise an abuse of process, contrary to Rule 21.01(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 on the grounds that the University"s agreement to fund St. Lewis" libel action constitutes champerty and maintenance.

[19] Rancourt"s motion relies on evidence contained in his affidavit affirmed on January 16, 2012 which consisted of a nine page affidavit plus 191 pages of attached exhibits. The plaintiff did not cross-examine Rancourt on his affidavit.

[20] Beaudoin J. was initially appointed as the Case Management Judge for this action. The University sought leave to intervene in the defendant"s motion to have the action stayed or dismissed on the basis of champerty and maintenance. Beaudoin J. held that leave was not required because the University would be affected by the order and pursuant to r. 37.07(1), and as a result, held that the University had the right to file material in response to Rancourt"s motion.

[21] The University filed affidavits from Allan Rock, the president of the University of Ottawa, and Céline Delorme, counsel for the University, in the labour arbitration arising out of the dismissal of Rancourt by the University in 2009. These affidavits were sworn on February 21 and 16, 2012 respectively. The University also served and filed affidavits from Bruce Feldthusen, Dean of the Faculty of Common Law at the University and the plaintiff, St. Lewis, which were sworn on February 21, 2012.

[22] On April 2, 2012, a case conference was held before Beaudoin J. who issued an endorsement containing the following terms:

(1) Mr. Rancourt will examine Mr. Giroux, Chair of the Board of Governors of the University of Ottawa (as a witness on the pending motion on April 18, 2012 at 10:00 a.m.).

(2) Mr. Rancourt will cross-examine Mr. Rock on his affidavit on April 18, 2012 at 2:00 p.m.

(3) Mr. Rancourt will cross-examine Ms. St. Lewis on her affidavit on April 23, 2012 at 10:00 a.m.

(4) Mr. Rancourt will cross-examine Mr. Feldthusen on his affidavit on April 23, 2012 at 2:00 p.m.

(5) Mr. Rancourt will cross-examine Ms. Delorme on her affidavit on April 24, 2012 at 10:00 a.m.

(6) Mr. Rancourt will deliver any supplementary affidavit to the evidence given by Mr. Giroux at his examination by April 23, 2012. [emphasis added]

[23] The cross-examinations by Rancourt took place on the dates and times set out in the above case conference endorsement.

[24] On April 23, 2012, Rancourt delivered a further affidavit affirmed by him. This affidavit attached three documents he received from St. Lewis in April 2012, and six documents which were copies of exhibits referred to in the cross-examination on the affidavits, all of which were attached as Exhibits A, B, C, E, F, G, H, I, and J, to his affidavit. A third section of this affidavit referred to unidentified documents that Rancourt believed would be produced by the University in his labour arbitration in May 2012.

[25] On May 4, 2012, a further case management conference was held before Beaudoin J. During that case conference, the University advised Rancourt and the court that its position was that Rancourt"s April 23rd affidavit was not admissible. On May 4, 2012, Beaudoin J. made the following endorsement related to this issue:

3. The Champerty Motion will be heard at 10:00 a.m. on August 29, 2012. The Defendant"s request to file additional affidavit material for use on the motion will be dealt with at that time.

[26] The documents attached as Exhibits A-J to Rancourt"s April 23, 2012 affidavit are all documents which he had in his possession prior to the cross-examination of Mr. Giroux. All but one of the exhibits relate to Mr. Rock and not to Mr. Giroux or his evidence. The exhibit relating to Mr. Giroux (Exhibit D) is a copy of an article written by a professor at the University of Waterloo about whether Rancourt"s dismissal by the University in 2009 was justified. This evidence is not relevant to the champerty motion.

[27] On June 20, 2012, Beaudoin J. heard a motion by Rancourt to compel the witnesses tendered by the University, including Mr. Giroux, to answer questions and produce documents which they had refused during their cross-examinations. Rancourt"s refusals motion was entirely dismissed by Beaudoin J. His written reasons were released on August 2, 2012. At paras. 30-31 of his decision, Beaudoin J. stated as follows:

> In the Compendium of Argument that he filed at the hearing of this motion, Dr. Rancourt alleges for the first time on page 1:
>
> > In order to establish that the University has engaged in maintenance and champerty to the extent that it constitutes an abuse of process, the Defendant wishes to demonstrate that the **real motive for the University funding the litigation of the Plaintiff is to persecute, harm, and/or suppress the Defendant and, as such, that the action is vexatious and an abuse of process.** (Emphasis mine)

[28] Rancourt's allegation about the University's alleged improper motive was not mentioned anywhere in his Notice of Motion or in his Affidavit material filed in support of his champerty motion in January 2012.

[29] The issues addressed in Rancourt's April 23rd affidavit relate to copies of e-mails between St. Lewis and Allan Rock, as well as Stéphane Émard-Chabot, the article by Professor Westhues and e-mails to or from Allan Rock related to Rancourt's conduct as a professor or related to his dismissal. Rancourt's May 23rd affidavit relates to alleged covert surveillance of him by the University, the alleged use of Rancourt's medical information by the University without his knowledge or consent, and also an e-mail sent in 2008 related to Rancourt's dismissal.

[30] In para. 33 of Beaudoin J.'s August 2, 2012 decision, he stated:

> Relevancy is determined by an examination of the issues raised on the motion, and by a review of the affidavits filed in support and in response. However, a party cannot broaden the scope of cross-examinations beyond what is required to determine the issues in the motion by putting irrelevant material in his or her transcript.[1] I would add that a party cannot broaden the scope of cross-examination by including a reference to irrelevant material in his or her Notice of Examination.

[31] Beaudoin J. decided that the issues dealt with by Rancourt in his April 23rd and May 23, 2012 affidavits were not relevant to the champerty motion. On Issue 15 in the refusals motion with regard to Mr. Giroux, Mr. Giroux refused to answer the question "Does the University have any policy or directives about its use of surveillance of professors or students?" Beaudoin J. stated as follows:

> Ruling: Not relevant to the matters raised in the Notice of Motion. Dr. Rancourt was aware of surveillance of himself in 2008 before Mr. Rock became President, moreover, this is being litigated in the labour arbitration.

[32] Exhibit I attached to Rancourt's April 23rd affidavit was put to President Rock during his cross-examination as "evidence which Mr. Rock may or may not be aware of and extensive covert surveillance campaign of me and of my students that was run by the University of Ottawa". In his factum on this motion, Rancourt relies on Exhibits C, D, E, F, H and I to the April 23rd affidavit as evidence to establish that "the University ran an extensive covert information gathering campaign against full tenured Professor Rancourt, with a hired student who used a false identity and fraudulent methods."

[33] Rancourt abandoned the issue of asking Mr. Rock if he was aware that the University made a third party psychiatric assessment of him without his knowledge or consent. He also

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[1] *BASF Canada Inc. v. Max Auto Supply (1986) Inc.*, [1998] O.J. No. 3676 at para. 10 (S.C.J.) (Master Beaudoin); *Caputo v. Imperial Tobacco Ltd*., [2002] O.J. No. 3767 at para. 14 (S.C.J.) (Master Macleod).

abandoned the issue of whether Mr. Rock had ever paid to obtain recordings or transcripts of any of Rancourt‟s various talks or interviews.

[34] Exhibit J to Rancourt‟s April 23, 2012 affidavit is a copy of a letter from the University to Dr. Louis Morissette. Rancourt relies on this letter as evidence that the University obtained a psychiatric evaluation of him without his knowledge or consent. However, Beaudoin J. has already ruled this issue was irrelevant to the champerty motion.

[35] Rancourt brought a motion seeking Leave to Appeal from Beaudoin J.‟s determination of the relevance of these issues. Leave to Appeal was denied by Annis J. in his decision dated November 29, 2012 as a result Beaudoin J.‟s decision is final and binding.

[36] Rancourt worked at the University for 23 years as a Physics Professor until he was dismissed by the University in 2009. His dismissal is presently being contested in a labour arbitration between his union and the University. He attained the rank of a fully tenured Professor in 1997.

[37] In his affidavit of January 2012 filed in support of his motion, Rancourt set out the following reasons for finding an abuse of process based on champerty and maintenance:

(a) the University was using a fact of the defamation litigation and its content as evidence against him in the labour arbitration;

(b) the University was entirely funding the plaintiff‟s defamation action (the University agrees that it is fully funding St. Lewis‟ legal costs in the defamation action); and

(c) the University was receiving a share of the proceeds of the action because the plaintiff had stated in her Statement of Claim that if punitive damages were awarded against Rancourt, she would donate half of the award of punitive damages to the Danny Grover Routes to Freedom Graduate Law Student Scholarship Fund.

[38] The two allegations made in his January affidavit in respect of the motive of the University for funding St. Lewis‟ defamation action are as follows:

(a) Firstly, that the University was using the fact of the defamation litigation and its contents as evidence against him in the labour arbitration; and

(b) Secondly, that the University was receiving a share of the proceeds of the action.

[39] In a letter from the University‟s lawyer, David W. Scott, dated October 25, 2011, Rancourt was advised that the University was entirely funding the plaintiff‟s defamation action for the reasons set out in the letter. Mr. Scott wrote as follows:

> Indeed, the University of Ottawa is reimbursing Professor St. Lewis for her legal fees incurred in her defamation proceeding in the Courts against you. Your defamatory remarks about Professor St. Lewis were occasioned by work which

> she undertook at the request of the University and in the course of her duties and responsibilities as an employee. Her efforts were not personal, but in the interests of the University. Furthermore, your outrageously racist attack upon her takes this case out of the ordinary and, in the view of the University, alone creates a moral obligation to provide support for her in defence of her reputation.

[40] In his affidavit, Mr. Rock stated that he made the decision that the University would reimburse St. Lewis for her legal fees incurred in her defamation action against Rancourt. Mr. Rock further stated that it was St. Lewis‟ action, and that only she provided instructions to her counsel. He further stated that the University has not, and does not provide instructions to St. Lewis‟ legal counsel.

[41] The senior management committee (known as the Administrative Committee) of the University and the Executive Committee of the University‟s Board of Directors were made aware of Mr. Allan Rock‟s decision on behalf of the University that it would reimburse St. Lewis for her legal fees in this proceeding.

[42] Mr. Rock has also stated that he never had any discussion with St. Lewis about her proposal to donate half of any punitive damages awarded to the Danny Grover Routes to Freedom Graduate Law Student Scholarship Fund. Mr. Rock stated "I never discussed this aspect of the matter with her. My decision to have the University reimburse her for her legal fees had nothing to do with her intention to donate a portion of any eventual award to a scholarship fund." Mr. Rock further stated at para. 10 of his affidavit:

> At the time that I agreed that the University would reimburse Professor St. Lewis for her legal fees, I had no idea that she intended to donate any portion of any damages she may be awarded to the scholarship fund. I first became aware of that fact after the Statement of Claim had been issued.

[43] Ms. Delorme stated in her affidavit that the University was not using St. Lewis‟ defamation action in the labour arbitration, nor was it asking the arbitrator to determine issues related to the defamation action. The University was only asking the labour arbitrator to consider the content of the defendant‟s blog – namely, the statements he made about St. Lewis, but not to consider the fact that he was involved in a defamation lawsuit.

[44] Robert Giroux, who was the Chair of the Board of Governors of the University, stated that he knew nothing of any proceeds of the action going to the University and he was told that the decision had been made because a Professor had been "tainted" and that Mr. Rock felt it appropriate to support her.

Analysis

Issue previously decided by Beaudoin J.

[45] In his decision, *St. Lewis v. Rancourt*, 2012 ONSC 4494, dated August 2, 2012, Beaudoin J. has already ruled that the evidence sought to be introduced in Rancourt‟s April 23 and May 23 affidavits was irrelevant to the issues involved in the champerty motion. As a result,

I agree with the University‟s submission that based on Beaudoin J.‟s findings, the defendant is estopped from relitigating the same issues raised in the above affidavits, in this champerty motion.

[46] In his decision of August 2, 2012, Beaudoin J. held that the only relevant allegations of fact related to champerty and maintenance motion were those made by Rancourt in his Notice of Motion and supporting affidavit dated in January 2012. Those allegations were as follows:

(1) The University is entirely funding the litigation;

(2) The University will receive a share of the proceeds; and

(3) The University is using the fact of the defamation suit to bar the defendant a return to his post even if his dismissal is found to be unjustified.

[47] Beaudoin J. ruled that the evidence which sought to establish "that the real motive for the University funding the litigation of the Plaintiff is to persecute, harm and/or suppress the Defendant and, as such, the action is vexatious and an abuse of process", was irrelevant and inadmissible on the champerty motion.

[48] If an issue has been decided by the Court between the same parties, then neither party can be allowed to argue the same issue over again. The interlocutory judgment of Beaudoin J. at para. 30 on that issue is binding, when the same question is raised between the same parties in the same action. (See *Diamond v. Western Realty Co.*, [1924] S.C.R. 308, at p. 8; *Hawley v. North Shore Mercantile Corp.*, 2009 ONCA 679, 255 O.A.C. 143, at paras. 25-26 and *Toronto-Dominion Bank v. Leigh Instruments Ltd. (Trustee of)* (1997), 35, O.R. (3d) 273 at pages 3-6.)

[49] In the case conference decision of April 2, 2012, Beaudoin J. decided that Rancourt was permitted to deliver a supplementary affidavit by April 23, 2012 to respond to the evidence given by Mr. Giroux at his cross-examination. The affidavits of April 23rd and May 23rd do not respond to Mr. Giroux‟s evidence other than attaching an irrelevant article about the merits of Rancourt‟s dismissal written by a professor from the University of Waterloo. Rancourt‟s supplemental affidavits attempt to introduce evidence of e-mails indicating that Allan Rock was upset with some of Rancourt‟s actions and statements made before the University decided to terminate Rancourt‟s employment as a professor.

[50] I agree with the University‟s submission that the evidence sought to be filed in Rancourt‟s April 23 and May 23, 2012 affidavits is irrelevant and inadmissible. Beaudoin J. has previously decided that relevancy was determined by an examination of the issues raised in his motion and by a review of the affidavits filed in support of the champerty motion by Rancourt in January 2012 and the affidavits filed in response. Leave to Appeal was denied and this decision remains final and binding on the parties.

Further affidavits not permitted after cross-examination under Rule 39.02(2)

[51] The University also submits that Rancourt‟s affidavits of April 23 and May 23, 2012 should not be admitted because they do not comply with Rule 39.02(2) which reads as follows:

> A party who has cross-examined on an affidavit delivered by an adverse party shall not subsequently deliver an affidavit for use at the hearing or conduct an examination under rule 39.03 without leave or consent, and the court shall grant leave, on such terms as are just, where it is satisfied that the party ought to be permitted to respond to any matter raised on the cross-examination with evidence in the form of an affidavit or a transcript of an examination conducted under rule 39.03. R.R.O. 1990, Reg. 194, r. 39.02 (2).

[52] The Notice of Motion and supporting affidavit of January 16, 2012 filed by Rancourt made no mention of the alleged motive set out in para. 30 of Beaudoin J."s reasons of August 2, 2012. Rancourt"s affidavits of April 23rd and May 23rd only peripherally address an alleged improper motive which was not mentioned in Rancourt"s initial motion materials, and consequently this issue was not specifically addressed in any of St. Lewis" or the University"s responding materials. The responding parties argue that the affidavits should be inadmissible for this reason as well.

[53] Rule 39.02(2) requires that leave be obtained in order to file further affidavits after a party has completed his or her cross-examinations. In *Sure Track Courier Ltd. v. Kaisersingh*, 2011 ONSC 7388 (Ont. Sup.Ct.), at para. 29, the Court stated that leave to file affidavits after cross-examination should be granted sparingly.

[54] The criteria for granting leave to file additional affidavit material, after cross-examination on the affidavits have been completed, were set out in *First Capital Realty Inc. v. Centrecorp Management Services Ltd.*, (2009) 258 O.A.C. 76 (Ont. Sup Ct. (Div. Ct.)), at para. 13, where the Divisional Court stated as follows:

1) Is the evidence relevant?
2) Does the evidence respond to a matter raised on the cross-examination, not necessarily raised for the first time?
3) Would granting leave to file the evidence result in non-compensable prejudice that could not be addressed by imposing costs, terms, or an adjournment?
4) Did the moving party provide a reasonable or adequate explanation for why the evidence was not included at the outset?

[55] I find that leave to adduce the further affidavits of April 23 and May 23 by Rancourt after he completed his cross-examinations, do not meet the tests set out above in *First Capital Realty Inc., supra*. Firstly, the evidence contained in the affidavits is not relevant to the issues identified in Rancourt"s motion and affidavit materials filed in January 2012. This issue has already been decided by Beaudoin J. and leave to appeal denied. Secondly, the evidence contained in the two affidavits does not respond to a matter raised in the cross-examinations, nor does it respond to the evidence given by Mr. Giroux on his cross-examination. The only exhibit related to Mr. Giroux"s cross-examination is an irrelevant article written by a University of Waterloo professor about Rancourt"s dismissal (Exhibit D). In his case conference decision of April 2, 2012, Beaudoin J. permitted Rancourt to file a further affidavit only in response to Mr. Giroux"s examination. I would allow Rancourt"s April 23, 2012 affidavit to be filed but only

as it relates to Exhibit D. However, I also find that Exhibit D is irrelevant hearsay evidence which is not relevant to the champerty motion.

[56] Thirdly, the evidence attached to Rancourt"s affidavit consists of documents put to witnesses during cross-examination which the witnesses objected to or did not recognize. Rancourt had all of these documents in his possession before the cross-examination took place. I agree with the University"s submissions that a party cannot "bootstrap the admissibility of a subsequent affidavit by putting the evidence in that affidavit to a witness in cross-examination and using that witness" proper refusal or lack of knowledge to form the basis for its subsequent admissibility."

[57] Finally, I find that the University would suffer prejudice if the issues as pleaded in the motion filed in January 2012 were changed by filing new affidavits raising additional issues after cross-examinations were completed. Rancourt has not provided any reasonable or adequate explanation for why the evidence he attached to his April and May affidavits was not included in his affidavit and materials filed in January 2012, as these materials were in his possession before he cross-examined President Rock.

[58] Even if the April 23rd and May 23rd affidavits were admitted as evidence of the exhibits attached to the affidavits, I find that the exhibits (other than Exhibit D) consist of copies of e-mails to or from Allan Rock which indicate that Allan Rock disagreed with certain actions or statements made by Rancourt. This evidence is not surprising as President Rock decided to terminate Rancourt"s employment as a professor in 2009, because President Rock and the University disagreed with Rancourt"s conduct as a professor. However, the attached exhibits do not constitute evidence that the University agreed to fund St. Lewis" defamation action for improper reasons. To suggest that the e-mails attached as exhibits to the April 23rd and May 23rd affidavits constitute evidence of an improper motive by the University for funding St. Lewis" defamation action is pure speculation on Rancourt"s part.

Disposition of the admissibility of the April 23 and May 23, 2012 affidavits

[59] For the above reasons, I find that the April 23 and May 23, 2012 affidavits filed by Rancourt are inadmissible on the champerty motion and even if they were admissible they do not constitute relevant evidence of an improper motive of the University but are mere speculation.

Issue #2 Should a trial of an issue be ordered?

[60] In his factum, Rancourt requests that the issue of staying St. Lewis" action as an abuse of process on the basis of maintenance and champerty be disposed of by a trial of an issue pursuant to Rule 37.13(2)(b).

[61] St. Lewis submits that this is yet another attempt by Rancourt to delay the determination of his champerty motion, and is contrary to his previous representations to the Court that his champerty, maintenance and abuse of process motion had to be decided prior to trial because it could end the litigation.

[62] At the May 4, 2012 case management conference, Beaudoin J. set August 29, 2012 for Rancourt"s champerty motion to be heard. The August 29th hearing date was cancelled due to

Rancourt‟s allegations of bias against Beaudoin J. After I was appointed as the case management judge, I set the date of December 13, 2012 to hear Rancourt‟s champerty motion. This date was set at a case conference held on September 27, 2012.

[63] Rancourt did not give any notice to the responding parties prior to November 30, 2012 when he filed his factum that he would seek an order directing a trial of the maintenance and champerty issues rather than having his motion heard. Rancourt seeks to change his prior submissions that the champerty and abuse of process issues had to be decided prior to trial. He seeks to change his position and argue that this matter should be decided at trial or by a trial of an issue.

[64] Rule 21.01(3)(d) reads as follows:

> (3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,
>
> …
>
> (d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court, and the judge may make an order or grant judgment accordingly.

[65] Rule 37.13(2) reads as follows:

> A judge who hears a motion may,
> (a) in proper case, order that the motion be converted into a motion for judgment; or
> (b) order the trial of an issue, with such directions as are just, and adjourn the motion to be disposed of by the trial judge. R.R.O. 1990, Reg. 194, r. 37.13 (2).

[66] Rancourt brought this motion in January 2012 seeking to stay or dismiss St. Lewis‟ defamation action as an abuse of process based on champerty and maintenance. All parties have filed numerous affidavits, the responding parties have been cross-examined on their affidavits, a refusals motion was brought by Rancourt with regards to the University‟s affiant‟s refusal to answer certain questions, the date to hear the champerty motion was set for August 29, 2012 and then adjourned due to an allegation of bias against Beaudoin J. and rescheduled to December 13, 2012.

[67] Rancourt‟s first objection to this motion being heard and his request that the court order a trial of the issue, pursuant to Rule 37.13(2)(b) and (3) was in his factum dated and filed on November 30, 2012. This factum was delivered approximately 11 months after Rancourt had commenced this motion and after the motion date had been set for August 29th and then adjourned to December 13th for a full day hearing. In addition, the motion has now been fully argued by the parties.

[68] Rule 1.04 requires that the Rules "be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits."

[69] Rancourt now submits that there is conflicting material evidence, in which credibility is an essential feature, which he submits requires a trial of an action to resolve.

[70] Rancourt submits that main material conflict in the evidence is that President Rock has given sworn evidence that the University‟s motive for funding the plaintiff‟s litigation were proper. Rancourt alleges that a possible *animus* of President Rock towards him because of his dismissal as a Professor in 2009 constitutes evidence of an improper motive for the University to pay legal costs of one of its employees, St. Lewis, to pursue a defamation action against him.

[71] The University and St. Lewis submit that there is no evidence of an improper motive for the University‟s decision to fund St. Lewis‟ defamation action because Beaudoin J. has held that the issues raised in the April 23rd and May 23rd affidavits are not relevant and as such, they are not admissible. I have held that Beaudoin J. has already decided this and I have not admitted the affidavits.

[72] Rancourt submits that the University‟s real motive for funding St. Lewis‟ defamation action against him was to persecute or harm him. Beaudoin J. has already ruled that the evidence by which Rancourt sought to establish the "real motive for the University funding the litigation of the Plaintiff is to persecute, harm, and/or suppress the Defendant and, as such, that the action is vexatious and an abuse of process" was irrelevant and inadmissible on his champerty motion. As a result of his finding, this issue has been decided by Beaudoin J. and therefore, I find that there is no material conflict in the evidence which requires a trial of an issue.

[73] Even if the affidavits of April 23rd and May 23, 2012 were admitted, I conclude that there is no conflict in the material evidence related to the plaintiff‟s motive for commencing litigation against Rancourt. The plaintiff‟s uncontradicted evidence is that she decided to commence action against Rancourt to protect her reputation and that decision was not made by the University.

[74] With regards to Rancourt‟s submission that there is a conflict in the evidence over President Rock‟s motive for funding St. Lewis‟ defamation action, I find that even if the subsequent affidavits were considered, there is simply no evidence that Rancourt has produced showing that the University had an improper motive for funding an employee‟s defamation action other than his speculation about a possible improper motive because he is in a labour dispute with the University.

[75] I am also not satisfied that there is a conflict in the evidence related to the motive by President Rock. He has sworn an affidavit setting forth his reasons for agreeing to fund St. Lewis‟ defamation action. He has been cross-examined on his affidavit and no contradictions have arisen from President Rock‟s cross-examination that would warrant a trial of this issue.

[76] I also find that to order a trial of an issue after extensive cross-examinations were conducted, where the parties have spent time and incurred substantial expense over an 11 month period, where Rancourt has changed his approach and now seeks to have his motion turned into a trial of an issue would be inconsistent with the principles set out in Rule 1.04. Rancourt‟s request to convert his motion into a trial of an issue would create unnecessary expense and delay and is

not necessary to secure a just result because the issues have already been defined by Rancourt in his January motion materials and the respondents in their responding affidavits as confirmed by Beaudoin J."s decision. There is only mere speculation by Rancourt that the University agreed to fund St. Lewis" defamation action for an improper purpose or improper motive.

Disposition of Issue #2

[77] For the above reasons, a trial of the issues raised in this motion will not be ordered.

Issue #3 Does the University's agreement to pay for St. Lewis' legal costs of her defamation action against Rancourt constitute champerty and maintenance?

Maintenance

[78] Maintenance is defined as the officious intermeddling in the litigation of others for an improper purpose. At p. 157, in the *Introduction to the Canadian Law of Torts*, G.H.L. Fridman 2nd ed., LexisNexis, Canada, 2003, the author states as follows:

> Maintenance is the officious intermeddling in the litigation of others, for an improper motive, when the maintainer has no personal interest in such litigation and the assistance, which usually takes the form of financial support, is unjustified. Champerty occurs when, in return for such support, the parties to the arrangement agree that any profits of the action will be shared between them. Champerty is an "aggravated" or "egregious" form of maintenance, in which there is the added element that the maintainer shares the profits of the litigation. Without maintenance there can be no champerty.

[79] In *The Law of Civil Procedure in Ontario*, Morden and Perell, 1st ed., LexisNexis, Toronto, 2010, at pages 72-73 the authors state that maintenance and champerty were torts and state as follows:

> The presence of maintenance or champerty may be a bar to a proceeding. Maintenance and champerty are torts, and they were once regarded as criminal offences. The gravamen of these torts is a person"s officious intermeddling or profiteering in another person"s lawsuit. … An action that involves maintenance or champerty may be dismissed as an abuse of process. (*Operation 1 Inc. v. Phillips,* [2004] O.J. No. 5290 (Ont. S.C.J.) and *Wong v. Second Cup Ltd.*, [2005] O.J. No. 2897 (Ont. Master)

[80] At page 73, Morden and Perell write:

> The focus of attention of maintenance … There is no maintenance unless there is an improper motive, (*Lorch v. McHale*, [2008] O.J. No. 2807, 92 O.R. (3d) 305 (Ont. S.C.J.); *S. v. K.*, [1986] O.J. No. 3035, 55 O.R. (2d) 111 (Ont. Dist. Ct.)) and there is no maintenance if the alleged maintainer has a legitimate reason or justification for assisting the litigant. (*Lorch v. McHale, supra*; *Morgan v. Steffanini*, [2005] O.J. No. 1606 (Ont. S.C.J.); *Ingle v. ACA Assurance*, [2005] O.J. No. 4653 (Ont. S.C.J.))

[81] In *McIntyre Estate v. Ontario (Attorney General)* (2002), 61 O.R. (3d) 257 (Ont. C.A.) at para. 34, the Court of Appeal stated as follows on the subject of maintenance:

> For there to be maintenance the person allegedly maintaining an action or proceeding must have an improper motive which motive may include, but is not limited to, officious intermeddling or stirring up strife. There can be no maintenance if the alleged maintainer has a justifying motive or excuse.

[82] To summarize the above cases and statements, in order to succeed on his motion to obtain a stay of the action as an abuse of process based on maintenance and champerty, Rancourt must show that:

(a) there has been officious intermeddling by the University, namely, that the University has funded St. Lewis" defamation action that she would not have otherwise pursued;

(b) the University did not have a legitimate reason or justification for assisting St. Lewis by providing funding; and

(c) the University had an improper motive for funding St. Lewis" libel action.

(a) Officious intermeddling

[83] The uncontradicted evidence of St. Lewis and Dean Feldthusen was that St. Lewis had decided to sue Rancourt for defamation before she asked the University to pay for her legal fees to do so. Dean Feldthusen supported St. Lewis" request for funding and arranged a meeting with the President of the University. President Allan Rock agreed, on behalf of the University, to pay St. Lewis" legal costs to sue Rancourt for defamation to protect her reputation as an employee of the University.

[84] In *Hill v. Church of Scientology of Toronto*, [1992] O.J. No. 451 (S.C.J.), aff"d [1995] 2 S.C.R. 1130, the Supreme Court of Canada found no impropriety in the Government of Ontario funding an employee"s libel action against a private entity. The University of Ottawa is a private entity and is not a governmental body, however, does receive grants from governments.

[85] The reason the University agreed to pay St. Lewis" legal costs for her libel action were set out in a letter from the University"s counsel, David Scott, which were referred to in the facts above. The relevant parts of the University"s reasons were that the alleged defamatory remarks about St. Lewis were occasioned by work, which she undertook at the request of the University and in the course of her duties and responsibilities as an employee of the University. Her efforts were not personal but in the interest of the University. Furthermore, the racist attack upon her took this case out of the ordinary and in the view of the University created a moral obligation to provide support for her in defence of her reputation.

[86] The uncontradicted evidence before me is that the University agreed to pay an employee"s legal fees, in this case, Professor St. Lewis, to fund her libel action which was commenced to defend her reputation. I therefore find that the University"s agreement to fund an employee"s defamation action does not, as was the case in *Hill v. Church of Scientology of*

Toronto, ibid, constitute officious intermeddling in litigation as St. Lewis had decided to sue Rancourt for libel to protect her reputation before the University agreed to fund her legal fees.

(b) and (c) Legitimate reason or justification for assisting St. Lewis or improper purpose

[87] Rancourt speculates and alleges that Allan Rock as President of the University had an improper motive for funding St. Lewis‟ libel action against him. He alleges that the University agreed to fund her defamation action in order to stigmatize and silence him after the University dismissed him from his full tenured professorship on April 1, 2009.

[88] There can be no maintenance if the University had a legitimate reason or justification for assisting the litigant. The evidence is uncontradicted from President Rock, Mr. Giroux, Dean Feldthusen and St. Lewis that, the University‟s reasons for assisting St. Lewis by paying her legal fees, was to defend her reputation. The reasons were set out in the letter from its counsel, David Scott, namely, because her reputation was attacked during the course of her employment by the University and also because the University felt that it had a moral obligation to assist her to defend her reputation in these special circumstances from a racist attack.

[89] In *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, the Supreme Court of Canada made several comments about the fact that the Ontario Government paid for the legal fees for the Crown Attorney, S. Casey Hill, to sue the Church of Scientology for libel. Similar allegations to those made by Rancourt were levelled at the Ontario Government. Paragraph 70 of the *Hill* decision reads as follows:

> They further submit that Casey Hill commenced these legal proceedings at the direction and with the financial support of the Attorney General in order to vindicate the damage to the reputation of the Ministry resulting from criticism levelled at the conduct of one of its officials. It is, therefore, contended that this action represents an effort by a government department to use the action of defamation to restrict and infringe the freedom of expression of the appellants in a manner that is contrary to the Charter.

[90] At para. 71, the Supreme Court states that “These submissions cannot be accepted. They have no legal, evidentiary or logical basis of support.” At para. 75, the Court continued by stating that “The appellants impugned the character, competence and integrity of Casey Hill, himself, and not that of the government. He, in turn, responded by instituting legal proceedings in his own capacity.”

[91] In *Hill v. Church of Scientology of Toronto, ibid*, the Government of Ontario paid for the legal costs for one of its Crown Attorney, S. Casey Hill, to fund a libel action against the Church of Scientology. Rancourt is speculating that the University had other improper motives, namely to silence him. However, they are not supported by any evidence as his allegation denied by President Rock, by St. Lewis, by Dean Feldthusen and by Mr. Giroux. The University does not deny that it terminated Rancourt and he is involved in a labour arbitration with his union to determine whether his dismissal was justified. This is a separate issue and does not constitute evidence of an improper motive on the part of the University.

[92] Rancourt‟s speculation that the University agreed to pay St. Lewis‟ legal costs of her defamation action in order to silence and stigmatize him is unsupported by any evidence. Even if the April 23rd and May 23rd affidavits were considered, I find that the evidence introduced by Rancourt does not contradict the evidence of Mr. Rock, Ms. Lewis, Dean Feldthusen or Mr. Giroux, with regards with the reasons that the University agreed to fund St. Lewis‟ defamation action against the defendant. As a result, there is no issue of credibility on these matters that require a trial of an issue.

[93] The situation for St. Lewis is very similar to those in the case of *Hill v. Church of Scientology* as St. Lewis was an employee and made her own decision to commence a libel action to defend her reputation and the University, as her employer, agreed to pay for her legal costs because her reputation was damaged in the course of her employment. I find that the University had a legitimate reason for assisting St. Lewis and there is no evidence that the University agreed to fund St. Lewis‟ libel action for an improper purpose or based on an improper motive.

Champerty

[94] As set out in para. [78] of this decision:

> Champerty is an “aggravated” or “egregious” form of maintenance, in which there is the added element that the maintainer shares the profits of the litigation.

[95] The uncontradicted evidence before me is that there was never any agreement between St. Lewis and the University to share in the proceeds of the libel action. The University agreed to fund St. Lewis‟ costs to pursue a defamation action against Rancourt to defend her reputation at the meeting of April 15, 2011 without any agreement that the University would share in the proceeds of the litigation.

[96] Professor St. Lewis decided, when issuing her statement of claim, that half of any punitive damages awarded would be paid to a scholarship fund. Her statement of claim was issued after the University agreed to pay for her legal costs, St. Lewis‟ unilateral decision to donate a share of the punitive damages awarded to a scholarship fund administered through the University does not constitute a contractual agreement to share in the proceeds. This proposal could be unilaterally revoked by St. Lewis at any time.

[97] I therefore find that the University‟s agreement to fund St. Lewis‟ defamation action did not constitute champerty because there was no agreement that the University would share in the proceeds of the action.

Was there trafficking in litigation?

[98] In *Dugal v. Manulife Financial Corporation*, 2011 ONSC 1785, at para. 8, Strathy J. dismissed a defendant‟s claim that a third party funding agreement in a class action was champertous and unlawful under *An Act respecting Champerty*, R.S.O. 1897, c. 327.

[99] At para. 33, Strathy J. stated:

> (a) …Just as contingency fee agreements have been recognized as providing access to justice, so too third party indemnity agreements can avoid the unfortunate result that individuals with potentially meritorious claims cannot bring them because they are unable to withstand the risk of loss: see *McIntyre Estate* at para. 55.
>
> (b) There is no evidence that CFI stirred up, incited or provoked this litigation, within the meaning of the term "moved" in s. 1 of the *Champerty Act*: see *McIntyre Estate* at para. 41. On the contrary, the plaintiffs demonstrated a clear intention to proceed with this litigation before CFI came on the scene.

[100] In this case, St. Lewis advised Dean Feldthusen that she had to sue Rancourt for defamation and requested that the University provide funding for her legal costs.

[101] An action will be dismissed as being frivolous and vexatious or abusive under Rule 21.03(3)(d) only in the clearest of the cases if on the face of the action and in circumstances where it is plain and obvious that the case cannot succeed. In *Sussman v. Ottawa Sun*, [1997] O.J. No. 181, (Ont. Gen. Div.), the court held that the maintenance and champerty were not defences to an action and as such, pleas will not be struck out.

[102] In *Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ON SC), at paras. 45 and 47, Cullity J. held that an action will rarely be stayed or dismissed as an abuse of process based on a champertous agreement. He held that the champerty must rise to a level of "trafficking in litigation", namely be an "unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation", to be considered an abuse of process, even then a stay will not necessarily be granted.

[103] I find the University"s agreement to fund St. Lewis" libel action does not constitute trafficking in litigation because St. Lewis had already decided to sue to protect her reputation and there is no evidence of the University buying or selling rights to litigation as it did not even have an agreement to share in the proceeds of the action.

Disposition of Issue #3

[104] I find that when the University agreed to pay for St. Lewis" legal fees for her defamation action as an employee to assist her to defend her reputation, which was allegedly damaged in the course of her employment for the University, does not constitute officious intermeddling, is a legitimate reason or justification for assisting her and does not constitute an improper purpose. I have found that the University did not enter into an agreement to share in the proceeds of litigation, and as a result, I find there is no champerty. For the same reason, the University"s agreement to fund the costs of the libel action does not rise to the level of trafficking in litigation as there was no purchase or sale of rights to the libel action by the University.

Disposition of Motion

[105] Rancourt"s motion to stay or dismiss the action on the basis that the agreement of the University to fund St. Lewis" defamation action was the product of maintenance and champerty is dismissed.

Costs

[106] The plaintiff and the University shall have fifteen (15) days to make submissions on costs, the defendant Rancourt shall have fifteen (15) days to respond and St. Lewis and the University shall have ten (10) days to reply.

'Original signed by Mr. Justice Robert J. Smith'

Mr. Justice Robert J. Smith

Released: March 13, 2013

CITATION: St. Lewis v. Rancourt, 2013 ONSC 1564
COURT FILE NO.: 11-51657
DATE: 2013/03/13

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Joanne St. Lewis

Plaintiff

– and –

Denis Rancourt

Defendant

University of Ottawa

Rule 37 Affected Party

REASONS FOR DECISION ON THE CHAMPERTY MOTION

R. Smith J.

Released: March 13, 2013

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

Tab 12-1

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

NOTICE OF MOTION

The Defendant, Denis Rancourt, will make a motion to the court on March 29, 2012, at 10:00 a.m., or soon after that time as the motion can be heard, or at a date and time as set under case management if applicable, at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

□ in writing under subrule 37.12.1 (1);

□ in writing as an opposed motion under subrule 37.12.1 (4);

X orally.

THE MOTION IS FOR:

1. An Order that the action be stayed or dismissed on the ground that the action is vexatious or is otherwise an abuse of process (Rule 21.01(3)(d) of the *Rules of Civil Procedure*).

2. The costs of this motion.

3. The Defendant's total costs in the action.

4. Such further and other relief as the Defendant may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The Plaintiff is a tenured assistant professor in law at the University of Ottawa. The Plaintiff's counsel (a law firm partner) is a part-time professor in law at the University of Ottawa.

2. The Defendant is a tenured full professor in physics dismissed after 23 years by the University of Ottawa in 2009. The dismissal is presently in on-going binding labour arbitration between the University and the Defendant's union.

3. This defamation action, filed in June 2011, is about the Defendant's public criticisms 2008-2011 of the University of Ottawa on his long-standing "U of O Watch" blog, centrally including criticisms of the Plaintiff's work for the University. The action seeks defamation damages of $1 million.

4. The Defendant denies that his criticism of the Plaintiff's work for the University was defamation at law (Statement of Defence) and takes the position that the action is champertous and improperly financed using public money.

5. The Court of Appeal for Ontario has defined maintenance and champerty (citing Halsbury) as:

> "Maintenance may be defined as the giving of assistance or encouragement to one of the parties to litigation by a person who has neither an [legitimate] interest in the litigation nor any other motive recognised by the law as justifying his interference. Champerty is a particular kind of maintenance, namely maintenance of an action in consideration of a promise to give the maintainer a share in the proceeds or subject matter of the action."

Buday v. Locator of Missing Heirs Inc., 1993 CanLII 961 (ON CA)

6. That an action should be stayed or dismissed as an abuse of process because it is based on a champertous agreement is established at law. When maintenance and champerty are demonstrated, the courts have ruled the remedy to be to stay or dismiss the action, including at the Court of Appeal for Ontario.

7. Following the Defendant's request, the University of Ottawa stated in an October 25, 2011 letter to the Defendant that it is entirely funding the instant litigation.

8. The Plaintiff's Statement of Claim (June 23, 2011) claims $125 thousand in punitive damages to be paid to the University for a scholarship fund. Therefore, the University of Ottawa is receiving a share in the proceeds of the action which it is funding entirely.

9. The Plaintiff is refusing all discovery and to even discuss a discovery plan. (The Defendant provided an Affidavit of Documents early in the process.)

10. A need to examine the Plaintiff and witnesses for this motion (Rule 39.03) arises in part from the Plaintiff's sustained refusal of any discovery (see above) and is necessary in order to ascertain:
    (a) The funding agreement between the University and the Plaintiff;
    (b) The source of the funding;
    (c) The maintenance and champertous characteristics or circumstances of the funding; and
    (d) The motives for entering in the funding agreement for this action.

11. Rules 1.04(3), 2.01(1), 2.03, 3.02(1), 21.01(3)(d), 29.01, 30, 34.01(d), 34.02, 34.04(1), 34.04(4)-(5), 34.05-06, 34.08(1), 34.10, and 39.03 of the *Rules of Civil Procedure*.

Court File No.: 11-57657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

Tab 12-2

DENIS RANCOURT

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $2000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

DEFAULT JUDGMENT
IF YOU FAIL TO SERVE AND FILE A STATEMENT OF DEFENCE, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU, IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 23, 2011

Issued by: _____

Address of Court Office:
161 Elgin Street
Ottawa, Ontario K2P 2K1

TO:

Denis Rancourt

CLAIM

1. The Plaintiff, Joanne St. Lewis, claims the following relief against the Defendant Denis Rancourt:

   (a) general damages for defamation in the amount of $500,000;

   (b) aggravated damages for defamation in the amount of $250,000;

   (c) punitive damages for defamation in the amount of $250,000;

   (d) an interlocutory injunction and a permanent injunction to restrain the Defendant from any further publication of the defamatory statements complained of in this Statement of Claim;

   (e) an Order requiring the Defendant to permanently remove or take down the defamatory statements complained of in this Statement of Claim from any electronic database where they are accessible;

   (f) an Order requiring the Defendant to assist the Plaintiff in obtaining the removal or take down of the defamatory statements complained of in this Statement of Claim from: Internet search engine caches (such as Google); any electronic database where the defamatory statements are accessible; and other Internet websites operated by third parties;

   (g) a mandatory injunction requiring the Defendant to publish a full and complete retraction of the defamatory statements complained of in this Statement of Claim and a full and complete apology approved by the Plaintiff;

   (h) pre and post-judgment interest on all amounts claimed in accordance with the *Courts of Justice Act*;

   (i) costs on a full indemnity basis; and

   (j) such further and other relief as this Honourable Court may deem just.

Professor Joanne St. Lewis

2. The Plaintiff Joanne St. Lewis is an Assistant Professor in the Common Law Section of the Law Faculty at the University of Ottawa ("Professor St. Lewis") and resides in the City of Ottawa. Professor St. Lewis obtained her tenure in 2001. Professor St. Lewis was called to the Bar of British Columbia in 1984 and was admitted as a member of the Law Society of Upper Canada in 1997.

3. Professor St. Lewis is the Director of the POWER: Progress & Opportunities for Women's Equality Rights/Africa-Canada which is located at the Human Rights Research and Education Centre of the University of Ottawa. The project is currently engaged in examining the links between sexual violence in the Congo and the extractive industries/natural resource sector.

4. Professor St. Lewis' life work has been dedicated to the promotion of equality rights in the law and legal culture, including racial and gender equality. Professor St. Lewis has worked to promote equality rights in numerous capacities, including as:

(i) co-chair of the Canadian Bar Association Working Group on Racial Equality and author of the report *Virtual Justice: Systemic Racism in the Canadian Legal Profession*;

(ii) Advisor to the Centre for Research-Action on Race Relations (Montreal);

(iii) Advisory Council member of the Canadian Lawyers for International Human Rights (CLAIHR);

(iv) Faculty Advisor to the Black Law Students Association of Canada (BLSAC).

5. Professor St. Lewis was the first and only Black woman to be elected as a Law Society of Upper Canada Bencher in its 214 year history. Professor St. Lewis served in various capacities including as Chair of the Equity and Aboriginal Issues Committee, Chair of the Human Rights Monitoring Group and Chair Bicentennial Report Working Group.

6. Professor St. Lewis was the founding Director of the Education Equity Program at the Faculty of Law in 1989. Prior to that she held positions as the Executive Assistant to the

Chief Commissioner of the Ontario Human Rights Commission and was a Race Relations Consultant with the Ontario Race Relations Directorate. In 1986, she was the Executive Assistant to the Grand Chief of the Crees of Quebec where she contributed to the negotiations of the $100 million 1986 La Grande Agreement.

7. Professor St. Lewis has been involved in the development of anti-racist decision-making since 1990. Her paper "Meeting at the Crossroads: Judicial Decision-Making in a Racially Sensitive Context" for the Canadian Judicial Centre (CJC) was the catalyst for the creation of the first anti-racism training video for federally appointed Judges. She also served as a member of the Social Context Education Curriculum Committee of the National Judicial Institute (successor to the CJC) and conducted national training programs for the Judges.

8. Professor St. Lewis served as a technical Advisor to the World Council of Churches, Programme to Combat Racism in 1990-1991 including participating in their first Continental Consultation on Racism in the Americas and the Caribbean.

9. In 1992, she became the first woman of colour to serve as the Executive Director of the Women's Legal Education and Action Fund (LEAF).

10. From 1992-94, Professor St. Lewis was a steering committee member of the African-Canadian Legal Clinic where she was a key person on the strategic team that lead to the formation and funding by the Government of Ontario of a legal clinic devoted to using a test case litigation strategy to address racism against African-Canadians.

11. Professor St. Lewis was the Special Advisor on Race Relations to the Deputy Attorney General (Ontario). Her work lead to the formation of the ground-breaking Commission on Systemic Racism in the Ontario Criminal Justice System and its report in 1995.

12. In 1996, Professor St. Lewis was asked to prepare an External Review Report of the Indigenous Black and Mi'kmaq Program at Dalhousie University by then Vice-President (Academic and Research) Deborah Hobson.

13. Professor St. Lewis's participation in a conference for CBC foreign correspondents lead to her contribution of a chapter entitled "The Role of Black Consciousness in North American Nation States" in *Clash of Identities: Media, Manipulation and the Politics of the Self* by James Littleton in 1996. She has commented extensively on issues related to racism and social policy including: CBC Sunday Edition (2006) on Youth, Crime and Jamaican Culture; CBC The Docket (2003) on Racial Profiling, and was a regular commentator on CBC Morningside with Peter Gzowski.

14. Professor St. Lewis prepared an independent report for the Manitoba Justice Inquiry Implementation Commission on Aboriginal Peoples and Employment Equity in 2000.

15. Professor St. Lewis has a commitment to independent media which began with her work with the Independent World Television founders in 2004. She assisted with the development of their Southern Africa network while on her sabbatical in South Africa in 2004. In 2005, she served as the IWT host at a Beverly Hills event attended by over 200 guests where Gore Vidal was the special guest. Her contributions supported the launch of www.therealnews.com in 2007.

16. In 2007, Professor St. Lewis was a panellist on the Abolition and the Eradication of Racial Discrimination in a youth forum hosted by then Governor-General, Her Excellency Michaëlle Jean, entitled *From the Abolition of the Slave Trade to the Elimination of Racial Discrimination.*

17. Professor St. Lewis has also participated in work relating to the intersection between art and racist representation. In 2008 she served as faculty advisor and artist participant in an exhibit entitled *Corrective Lenses: Challenging Representations of Women of Colour in Art.*

18. In March 2008, Professor St. Lewis hosted a series of events sponsored by the Ministry of Citizenship (Ontario) and at the request of The Hon. Jean Augustine, then Chair of the Ontario Bicentenary Commemorative Committee on the Abolition of the Slave Trade Act and Ontario Fairness Commissioner. She hosted a series of events (Routes to Freedom) including the largest Canadian international conference on the matter, a youth forum and

documentary film festival, a two-week art exhibit and a reception for heads of mission from countries affected by the slave trade. She organized a gala fundraiser, attended by Danny Glover, actor and President of the TransAFrica Forum, to launch the formation of the Routes to Freedom Graduate Law Scholarship for students from Africa.

19. Professor St. Lewis' work and contributions to the community in her role as a national expert in the area of anti-racist decision-making and critical race theory have been acknowledged by her peers and the broader community. She is the recipient of the 2001 Canadian Association of Black Lawyers Recognition Award of Black Women's Contribution to the Law, the 2008 DreamKEEPERS Life Achievement Award from the Martin Luther King, Jr. Day Coalition, the 2009 Canadian Association of Black Lawyers Outstanding Achievement Award, and was a 2009 Honoured Champion by the United Nations Association of Canada celebrating the 100th anniversary of International Women's Day.

20. Professor St. Lewis' work is recognized internationally. In August 2011, she is scheduled to teach in an Executive Program on Counter-Terrorism at the University of South California in August 2011, and in that capacity will lead the section on human factors (or racial profiling) for an international group of participants who are actively engaged in implementing counter-terrorism policies in their respective jurisdictions.

21. Professor St. Lewis is one of the founding members of the Black Women's Civic Engagement Network which has created two awards that celebrate the contribution of Black women to Canadian public life. She has received awards and spoken numerous times at Black History Month celebrations which are intended to bring awareness about the contribution of Black peoples to the social fabric of Canadian society.

Denis Rancourt

22. The Defendant Denis Rancourt is a former professor at the University of Ottawa. Mr. Rancourt publishes a blog entitled U of O Watch (uofowatch.blogspot.com) which he claims is "devoted to transparency at the University of Ottawa" and "exposes institutional

behaviour that is not consistent with the public good". The blog contains a multiplicity of attacks on the reputation of Allan Rock, the President of the University of Ottawa.

Student Appeal Centre Report

23. In November, 2008, Professor St. Lewis was serving as Director of the Human Rights Research and Education Centre of the University of Ottawa, when she was asked to prepare an evaluation of a report by the Student Appeal Centre of the Student Federation of the University of Ottawa ("Student Appeal Centre Report"). The Student Appeal Centre Report, which had been publicly released to the media, accused the University of Ottawa of systemic racism in its handling of academic fraud complaints against students.

24. Professor St. Lewis' point of contact with the University during the preparation of the evaluation was with then Vice-President Academic, Robert Major. Professor St. Lewis did not request, was not offered, and did not receive any compensation for the work she did in the evaluation of the Student Appeal Centre Report.

25. In the course of conducting the evaluation of the Student Appeal Centre Report, Professor St. Lewis met with representatives of the Student Appeal Centre and requested records and data necessary to conduct the evaluation, including, definitions for key terms such as "visible minority". The Student Appeal Centre did not provide Professor St. Lewis any data to assist in her evaluation of the Student Appeal Centre Report.

26. Professor St. Lewis' evaluation of the Student Appeal Centre Report was released on November 25, 2008 and was an advisory report – she had no decision-making powers regarding the matters dealt with by the Student Appeal Centre Report. Professor St. Lewis concluded that the Student Appeal Centre Report was methodologically flawed, lacked substantiation, and failed to provide a sufficient foundation to enable the University of Ottawa to identify the specific areas of concern or to assess the depth or existence of a problem.

27. Of particular concern to Professor St. Lewis was the allegation in the Student Appeal Centre Report that a lack familiarity with the concepts of plagiarism is inextricably tied to international or more particularly exclusively Asian women students, a conclusion that

could give rise to further stereotyping of these students as being more likely to commit academic fraud because of their educational background. She also noted that there was a clear lack of familiarity with the University's academic fraud process.

28. Professor St. Lewis made recommendations to deal with the serious allegations of possible systemic racism and procedural unfairness raised by the Student Appeal Centre Report. Recommendation #1 states:

> Recommendation 1: Conduct an independent assessment to determine whether systemic racism plays any part in the Academic Fraud process.
>
> That SAC [Student Appeal Centre] cooperate with the University in allowing it to undertake an independent analysis of the Academic Fraud data to identify and address any issues of systemic racism in the Academic Fraud process. All necessary measures should be taken to ensure the preservation of student privacy in the development of the report.
>
> The fact that the report did not succeed in its methodological attempts does not mean that there is not a problem that should be addressed. The University is bound by its obligations under the *Ontario Human Rights Code* and is committed to an inclusive community.

Professor St. Lewis' evaluation made nine other recommendations that were intended to address administrative or procedural issues alleged in the Student Appeal Centre Report.

29. On a blog published in December 2008, the Student Appeals Office of the Student Appeal Centre characterized Professor St. Lewis' evaluation of the Student Appeal Centre Report as an attempt to discredit student voices, but also noted that "Professor St. Lewis concludes her report with ten (10) recommendations that echo the SAC Report's recommendation and demands".

30. In December 2008, the Defendant Denis Rancourt published statements about Professor St. Lewis' evaluation of the Student Appeal Centre Report on his UofOWatch blog. The December 2008 blog (which was republished as part of his February 2011 blog) likened Professor St. Lewis' evaluation to academic fraud, and criticized the evaluation as unprofessional, intellectually dishonest and lacking in independence. The Defendant also predicted in his December 2008 blog that Professor St. Lewis was "in line for a promotion to Associate Professor soon".

31. Professor St. Lewis was made aware of the existence of the December 2008 blog shortly after its publication, but did not open or read the blog at that time, as she was unaware of any role that Denis Rancourt had in the preparation of the Student Appeal Centre Report and could not see how responding to him would address the concerns and recommendations she had expressed in her evaluation.

32. Between December 2008 and February 2011, Professor St. Lewis received unsolicited emails from Denis Rancourt that were sent to many faculty members outlining his employment dispute with the University of Ottawa which she did not read. Professor St. Lewis does not know Denis Rancourt personally or professionally.

The February 11, 2011 U of O Watch Blog

33. In February 2011, Denis Rancourt sent an email to Professor St. Lewis and University of Ottawa President Allan Rock that provided a link to a blog entry containing Professor St. Lewis' name, and invited Professor St. Lewis to provide any factual corrections or comments for posting on the blog. Consistent with past practice, Professor St. Lewis ignored the Defendant's blog and email.

34. In the weeks following the email, Professor St. Lewis was approached by her colleagues, students and strangers who informed her of a defamatory blog posted by Denis Rancourt, and offered her their support. Consistent with her past practice, Professor St. Lewis ignored the Defendant's February 11, 2011 blog.

35. In April 2011, Professor St. Lewis conducted a Google search of her name and was horrified to discover that Denis Rancourt's February 2011 blog now appeared on the front page of the Google search results for "Joanne St. Lewis" and referred to her as Allan Rock's House Negro. The page one Google search result reads:

> **U OF O WATCH: Did Professor *Joanne St. Lewis* act as Allan Rock's ...**
>
> 11 Feb 2011 ... Did Professor *Joanne St. Lewis* act as Allan Rock's house negro? February is Black History Month in Canada and the US. ...
> *uofowatch.blogspot.com/.../did-professor-**joanne-st-lewis**-act-as.html* - Cached

36. Within two days of Professor St. Lewis' discovery of the Google search result containing the racist and defamatory statement that she was a "House Negro", she discovered that its ranking changed from the fourth search result to the second search result on page one of her Google search results, indicating that measures were taken to give greater prominence to the Defendant's February 11, 2011 blog.

37. The Defendant's February 11, 2011 blog publishes Professor St. Lewis' photograph (which conveys to the world at large that she is Black) and the following text:

> Did Professor Joanne St. Lewis act as Allan Rock's house negro?
>
> February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters.
>
> The term "house negro" was defined by Malcolm X in his famous "The House Negro and the Field Negro" speech (see video below).
>
> The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom: **HERE**.
>
> The Student Appeal Centre (SAC) of the student union at the University of Ottawa today released documents obtained by an access to information (ATI) request that suggest that law professor Joanne St. Lewis acted like president Allan Rock's house negro when she enthusiastically toiled to discredit a **2008 SAC report** about systemic racial discrimination at the university.
>
> See today's SAC article **HERE**. See ATI documents released today by the SAC **HERE**.
>
> At the time, the St. Lewis report was critiqued by UofOWatch: **HERE**.
>
> The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration:
>
> The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page.

The SAC article posted today quotes Rock from the ATI documents explaining to his staff how to preserve the appearance of an independent report and the importance of preserving this appearance, in true experienced federal politician style.

This is a most damning revelation against the former Minister of Justice and former Canadian Ambassador to the United Nations, one that should disturb any university student learning about professional ethics.

Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!).

Former VP-Academic **Robert Major** is also found stating to a concerned student that the "independent" St. Lewis report will definitively resolve the matter (of the troublesome SAC report). In his November 2008 email Major actually says:

"The University has received and will make public this week an evaluation, by an independent assessor, of the report of the Student Appeals Centre. I believe this analysis will answer your questions on the mandate of the Senate Appeals Committee and on the whole appeals process. I invite you to read it carefully."

When the bosses have such high professional ethics why would professors be any different?

38. The Defendant Denis Rancourt falsely and maliciously published the following highly offensive, racist and defamatory statements of and concerning Professor St. Lewis in the February 11, 2011 blog entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro":

i. "Did Professor Joanne St. Lewis act as Allan Rock's house negro?"

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. acted as a "slave" to her white "master" (University of Ottawa President Allan Rock);

b. acted in a servile manner toward President Allan Rock (a white male) and the University of Ottawa;

c. acted in an inauthentic manner toward President Allan Rock (a white male) and the University of Ottawa;

d. forfeited her cultural and racial identity, heritage and/or traditions to serve the interests of President Allan Rock (a white male) and the University of Ottawa;

e. supports racism;

f. cooperates in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

g. has betrayed Black people or other minorities in order to gain a privileged position at the University of Ottawa or for personal gain or advantage;

h. lacks integrity;

i. was biased in the conduct and authoring of her evaluation of the SAC Report.

ii. "February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters."

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. needs to be "outed" for acting in a servile and inauthentic manner toward President Allan Rock (a white male) and the University of Ottawa;

b. needs to be "outed" for forfeiting her cultural and racial identity, heritage and/or traditions to serve the interests of University of Ottawa President Allan Rock (a white male) and the University of Ottawa;

c. needs to be "outed" for supporting racism and cooperating in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

d. needs to be "outed" for betraying Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

e. is a fraud;

f. is untrustworthy;

g. is a sell out to the Black community;

h. sold herself out to the President of the University of Ottawa;

i. falsely misrepresents her actual beliefs about Blacks.

iii. "The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom."

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. has abased herself on this or previous occasions;

b. has acted in an abjectly servile and deferential manner to, President Allan Rock and the University of Ottawa;

c. has put the interests of the University of Ottawa ahead of the interests of Black persons or other minorities in order to serve the interests of President Allan Rock and the University of Ottawa.

iv. "The Student Appeal Centre ("SAC") of the student union at the University of Ottawa today released documents obtained by an access to information ("ATI") request that suggest that law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university".

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. acted as a "slave" to her white "master" (University of Ottawa President Allan Rock);

b. acted in a servile manner toward University of Ottawa President Allan Rock (a white male) and the University of Ottawa;

c. acted in an inauthentic manner toward University of Ottawa President Allan Rock (a white male) and the University of Ottawa;

d. forfeited her cultural and racial identity, heritage and/or traditions to serve the interests of University of Ottawa President Allan Rock (a white male) and the University of Ottawa;

e. supported racism;

f. cooperated in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

g. betrayed Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

h. conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote the interests of University of Ottawa President Allan Rock, the University of Ottawa and/or herself;

i. sold herself out to the President of the University of Ottawa;

j. acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report;

k. was biased in conducting and authoring her evaluation of the SAC Report.

v. "The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration"

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. conducted and authored her evaluation of the Student Appeal Centre Report with a view to obtaining tenure, a promotion, or other personal benefit or gain;

b. conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote her self interest or the interests of University of Ottawa President Allan Rock and/or the University of Ottawa;

c. acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report;

d. was biased in conducting and authoring the evaluation of the SAC Report.

vi. "The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page."

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. participated in a high level cover up of wrongdoing;

b. was biased;

c. was dishonest in her evaluation of the SAC Report;

d. conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself;

e. acted without integrity in conducting and authoring her evaluation of the SAC Report.

vii. "Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!)."

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. was biased;

b. acted without integrity in conducting and authoring her evaluation of the SAC Report;

c. was dishonest in conducting and authoring an evaluation of the SAC Report;

d. conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself.

39. The Comments posted in reaction to the February 11, 2011 U of O Watch blog include:

> (i) "This is the most absurdly racist thing I've ever read. Please refrain from using freedom of speech as a curtain to hide behind when making such malicious and racist comments".
>
> (ii) "Who are you to use that term? Your racist comment has lost all validity of any other critique you are trying to make. And for the record, I doubt Malcolm X would have been onside with you about this one".
>
> (iii) "CHECK YOUR PRIVILEGE RANCOURT cause this is straight up racist".
>
> (iv) "... For you, as a privileged white man; to believe that you have the insight into the black struggle to know when a black individual is or is not behaving according to your arbitrary code of black behavior is stupid. Your communication and intent IS racist and rooted in your own ignorance. You pathetically high-jacked black history month in order to further your own agenda. It is not racist that you, as a white man, are unable to call a black person a house negro. In fact, it is racist that you think you can."

May 16, 2011 Notice

40. Counsel for Professor St. Lewis served Mr. Rancourt with a Notice on May 16, 2011 which states:

1. We are counsel for Joanne St. Lewis regarding publications authored by you and posted on your website "U of O Watch": http://uofowatch.blogspot.com/search/label/Joanne%20St.%20Lewis.

2. "U of O Watch" purports to expose institutional behaviour that is not consistent with the public good. Your website contains false, defamatory and highly offensive racist statements about Ms. St. Lewis. You have acted maliciously and with callous disregard for Ms. St. Lewis' personal and professional reputation by publishing these defamatory statements which include:

(i) Did Professor Joanne St. Lewis act as Allan Rock's house negro?

(ii) law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC Report about systemic racial discrimination at the university

(iii) the newly released ATI records are disturbing far beyond the non-tenured professor St. Lewis' uncommon zeal to serve the university administration. The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page.

(iv) when the bosses have such high professional ethics why would professors be any different?

3. Without prejudice to Ms. St. Lewis' right to commence an action against you and to attempt to mitigate the damages your defamatory statements have caused Ms. St. Lewis, we demand that the false, defamatory and highly offensive racist statements about Ms. St. Lewis be immediately taken down.

The May 18, 2011 U of O Watch Blog

41. In a flagrant and reckless disregard of the May 16, 2011 Notice from the Plaintiff's counsel, the Defendant refused to take down his defamatory statements, posted the May 16, 2011 Notice (referring to the Notice as a "new threat"), and published additional defamatory statements about Professor St. Lewis on his blog.

42. In a blog dated May 18, 2011 entitled "Top dog Canada freedom of the press lawyer targets U of O Watch blog", the Defendant falsely and maliciously published the following racist and defamatory statements of and concerning Professor St. Lewis.

> I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that **she acted like a house negro** and because it is my reasoned opinion that she acted like a house negro. She did so while **attempting to discredit** a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts of U of O racism **HERE**".

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. acted as a "slave" to her white "master" (University of Ottawa President Allan Rock);

b. acted in a servile manner toward the University of Ottawa and President Allan Rock when conducting and authoring her evaluation of the SAC Report;

c. acted in an inauthentic manner toward the University of Ottawa and President Allan Rock when conducting and authoring her evaluation of the SAC Report;

d. forfeited her cultural and racial identity, heritage and traditions to serve the University of Ottawa's interests in discrediting the Student Appeal Centre Report;

e. supports racism;

f. cooperates in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

g. has betrayed Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

h. lacks integrity;

i. was biased in the conduct and authoring of her evaluation of the Student Appeal Centre Report.

43. The May 18, 2011 blog republishes the February 11, 2011 blog by linking to the content of the February 11, 2011 blog, as follows: "Here, now, Dearden finds himself **threatening** an untenable case about **THIS** blog post concerning professor Joanne St. Lewis". The Plaintiff repeats and relies upon all of the meanings pleaded above regarding the defamatory statements published in the February 11, 2011 blog.

May 20, 2011 Notice

44. In response to the Defendant's May 18, 2011 blog, counsel for Professor St. Lewis served the Defendant Mr. Rancourt with another Notice dated May 20, 2011:

> 1. In a flagrant and reckless disregard of my letter dated May 16th notifying you to take down your defamatory statements about Professor Joanne St. Lewis, you have responded by publishing additional defamatory statements. And for the record, my letter is not a "threat" as you state in yesterday's publication. My letters are notices to you to cease defaming Professor St. Lewis and to immediately take down those defamatory statements.
>
> 2. Your additional defamatory and offensive statements in your U of O Watch blog include:
>
> > "I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro.
> >
> > She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racisms: See all posts of U of O racism HERE".
>
> 3. You are notified that your blog of yesterday is defamatory, offensive, malicious and seriously damaging to Professor St. Lewis' reputation. Take it down immediately. As previously notified, do not delete or destroy any records pertaining to your blog regarding this matter.

May 23, 2011 Blog

45. In a flagrant and reckless disregard of the May 20, 2011 Notice from counsel for the Plaintiff, the Defendant refused to take down his defamatory statements about Professor St. Lewis and published a blog dated May 23, 2011 entitled : "U of O Watch update: Richard Dearden Promises to Sue". The Defendant posted on his blog the email exchanges between him and counsel for the Plaintiff during the period May 20,2011 – May 23, 2011. The Defendant has also posted the May 16 and 20, 2011 Notices from counsel for the Plaintiff on his blog.

46. As of the date of the issuance of the Statement of Claim, the defamatory statements about Professor St. Lewis have not been taken down by the Defendant and he has not published a retraction and apology. Further, as of the date of the issuance of this Statement of Claim, a Google search of "Joanne St. Lewis" will rank the Defendant's racist and defamatory "House Negro" blog (February 11, 2011) as the second item on page 1 of the Google search results for "Joanne St. Lewis". This prominent Google search result states in part "11 Feb 2011 ... Did Professor Joanne St. Lewis act as Allan Rock's house negro? February is Black History Month in Canada and the US..."

Legal Innuendoes

47. In addition to the natural and ordinary meanings set out above, the Plaintiff will prove at the trial of this action that the racial slur "House Negro" used in its historical context has a profound and potent meaning to Black persons in Canada, and bears the following true or legal innuendos when published to members of the Black community in Canada; a "House Negro" is:

a. a person who is a race traitor;

b. a person who is a pariah in the Black community;

c. a person who by their actions is considered to be separated from the Black community and to have forfeited their social identity with the Black community;

d. a person who has severed their bond with the Black community and their racial and cultural heritage.

Identification of the Plaintiff

48. The defamatory statements set out in this Statement of Claim refer to Professor St. Lewis and are of and concerning Professor St. Lewis.

Malice

49. There was no valid justification for the Defendant to include any reference to Professor St. Lewis' race as part of his publications about Professor St. Lewis' evaluation of the Student Appeal Centre Report. The Defendant published a photograph of Professor St. Lewis to deliberately let the world know that she was Black. The Defendant is a white male. The Defendant knew the meaning of the racial slur "House Negro" and deliberately ensured that everyone reading his blog knew the meaning of the slur by incorporating a link to Malcolm X's House Negro/Field Negro speech. The use of the racially defamatory slur "House Negro" by a White person against a Black person is racist, and constitutes a racially motivated appropriation of a slur that has a profound and potent meaning when used in the historical context of Malcolm X's House Negro/Field Negro speech. The Defendant's defamatory and racist statements which he refuses to take down are reckless, spiteful, excessive and were intended to cause serious damage to Professor St. Lewis' reputation.

50. The Defendant published the racist slur "House Negro" in its historical context by including in his blog a link to a YouTube video in which Malcolm X uses the slur to characterize the House Negro as a Black person who participates in the denigration and oppression of other Black people. The Defendant's use of the racial slur "House Negro" was knowing and deliberate and was calculated to cause the maximum damage to Professor St. Lewis, a Black person who has devoted her life's work to the promotion of equality. The Defendant has maliciously accused Professor St. Lewis of betraying her Black community by being a House Negro to the President of the University of Ottawa (the white male "master"). The excessive defamatory statements maliciously attack

Professor St. Lewis' credibility in the Black community and her bond with the Black community that is so crucial to her personal and professional reputation.

51. The Defendant published the defamatory statements about Professor St. Lewis for an indirect motive, ulterior purpose and improper purpose. The Defendant defamed Professor St. Lewis in furtherance of his personal animosity towards President Allan Rock and the University of Ottawa which terminated him as a Professor. The Defendant was not criticizing Professor St. Lewis' evaluation of the Student Appeal Centre Report – he attacked her as an individual. The Defendant maliciously portrayed Professor St. Lewis as the "House Negro" to the University of Ottawa's white male President to denigrate her as a human being and to convey that she was putting the "fix" in for her white male "master" when she conducted and authored her evaluation of the Student Appeal Centre Report.

52. The Defendant's blog intentionally omits portions of Professor St. Lewis' evaluation (such as Recommendation 1) that contradict his defamatory statements. The Defendant never interviewed Professor St. Lewis before he published his defamatory statements. The Defendant's blogs were irresponsible publications.

53. The Defendant acted with malice by ignoring the May 16 and 20, 2011 Notices from the Plaintiff's counsel that he immediately remove and take down the false, defamatory and highly offensive racist statements he published about the Plaintiff. Further, he also republished the original defamatory publication (February 11, 2011) and published additional highly offensive and racist defamatory statements about the Plaintiff in response to the May 16, 2011 Notice from counsel for Professor St. Lewis. The Defendant continues to ignore the Notices dated May 16, 2011 and May 20, 2011 that demanded that he immediately take down the false and defamatory statements. Further, the Defendant has not retracted his defamatory statements and has not apologized to Professor St. Lewis.

54. Steps have been taken to have the Defendant's February 11, 2011 blog appear on the first page of the Google search results for "Joanne St. Lewis", with the intention of having persons who Google search "Joanne St. Lewis" to read that she is a "House Negro" to

University of Ottawa President Allan Rock. The traffic on the blog containing the racist slur far exceeds the traffic for any other blog by the Defendant. The Defendant has sought to exploit Professor St. Lewis' public profile and reputation to gain attention to his blog and his grievances with the University of Ottawa and President Allan Rock. Coupling the racist insults to Black History Month and a prominent Black intellectual was also exploitative in nature.

Injunction

55. Professor St. Lewis is a lawyer who works in the field of social justice. She is a national expert in the area of anti-racist decision-making and critical race theory. Her work and contributions to community have been acknowledged by her peers and the community. She is the recipient of numerous awards, including the 2001 Canadian Association of Black Lawyers Recognition Award of Black Women's Contribution to the Law, 2008 DreamKEEPERS Life Achievement Award from the Martin Luther King, Jr. Day Coalition, 2009 Canadian Association of Black Lawyers Outstanding Achievement Award and a 2009 Honoured Champion by the United Nations Association of Canada celebrating the 100th anniversary of International Women's Day.

56. Professor St. Lewis' work extends beyond the boundaries of the University of Ottawa and Canada. For instance, Professor St. Lewis will teach in an Executive Program on Counter-Terrorism at the University of South California in August 2011. She leads the section on human factors (or racial profiling) for an international group of participants who are actively engaged in implementing counter-terrorism policies in their respective jurisdictions. In past years, Professor St. Lewis has been the sole Canadian instructor in the program and the only Black woman. The class will be international in nature. It would not be unexpected for participants to Google search their instructor. The continued presence of the Defendant's defamatory statements will have a chilling effect on future students, colleagues, community members and those who might seek Professor St. Lewis for speaking engagements or consultations in government, organizations and corporations. This damage is irreparable.

57. Steps have been taken to give major prominence to the Defendant's attack on the reputation of Professor St. Lewis by having the Defendant's blog appear on the first page of the Google search results for "Joanne St. Lewis". An injunction must issue to compel the Defendant to take down his racist and defamatory publications and to prevent the Defendant from continuing his flagrant and reckless disregard of the Plaintiff's personal and professional reputation.

Damages

58. The Defendant's publication of the defamatory statements complained of in this Statement of Claim have exposed Professor St. Lewis to contempt, ridicule and hatred, and were calculated to lower Professor St. Lewis' personal reputation and professional reputation in the estimation of right thinking persons generally. The Defendant has caused mental distress to Professor St. Lewis by targeting her with his false, malicious and racist attack on her character, by denigrating her professional work through use of her racial and cultural identity as a Black woman, and by attacking her affiliation and bond with the Black community with which she identifies by calling her a House Negro. The defamatory statements have severely damaged Professor St. Lewis' reputation and have caused and will continue to cause damage, loss and injury to Professor St. Lewis.

59. The Defendant's conduct and actions have aggravated the Plaintiff's damages.

60. The Defendant's conduct and actions are reprehensible, insulting, high-handed, spiteful, and outrageous. Such conduct warrants condemnation by this Court by means of an award of punitive damages. Professor St. Lewis will rely upon the entire conduct of the Defendant before and after the May 16, 2011 Notice to the date of judgment in this action. In the event that punitive damages are awarded against the Defendant, Professor St. Lewis will donate half of the award of punitive damages to the Danny Glover Routes To Freedom Graduate Law Student Scholarship Fund.

Place of Trial

61. Professor St. Lewis requests that the trial of this action take place in the City of Ottawa.

Date: June 23, 2011

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Counsel for the Plaintiff

OTT_LAW\ 2830021\2

Joanne St. Lewis
Plaintiff

- and -

Denis Rancourt
Defendant

Court File No.
11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

STATEMENT OF CLAIM

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Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

Tab 12-3

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

STATEMENT OF DEFENCE

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(1) The Defendant admits the allegations contained in paragraphs 48, 61 of the Statement of Claim.

(2) The Defendant has no knowledge in respect of the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 35, 55 of the Statement of Claim.

(3) The Defendant denies all other allegations contained in the Statement of Claim, unless expressly admitted below.

The following are consecutively numbered paragraphs of allegations of material fact relied on by way of defence.

Chronology of material facts

The Defendant

(4) For twenty three years until 2009 the Defendant was a physics professor at the University of Ottawa; starting in 1987 jointly as an Assistant Professor and Natural Sciences and Engineering Research Council of Canada University Research Fellow, then promoted to Associated Professor and granted tenure in 1992, and promoted to Full Professor in 1997.

(5) In addition to his sustained scientific work, the Defendant has since approximately 2004 been an outspoken defender of student and minority rights and the rights of all oppressed peoples, via his university courses, community service, public lectures, blog and other writings, weekly radio show, media commentary, and community organizing efforts. The defendant has high regard for and has written about the American Black liberation struggle, such as the works of iconic figures Assata Shakur and Malcolm X.

The U of O Watch blog

(6) In May 2007 the Defendant started the blog “U of O Watch” with (as the name implies) the express purpose via public criticism of pressuring the University of Ottawa towards improved institutional behaviour. The blog was also expressly an actuation of a professor’s

statutory academic freedom “right to raise deeply disturbing questions and provocative challenges to the cherished beliefs of society at large and of the university itself.”

(7) The “U of O Watch” blog was included in the Defendant’s academic staff annual report every year since May 2007 (for academic year 2006-2007) that the Defendant was a professor at the University of Ottawa. The blog was an integral part of the Defendant’s professional activities protected under the purview of the Defendant’s academic freedom.

(8) In August 2007 University of Ottawa VP-Resources Victor Simon sent the Defendant a Notice pursuant to the *Libel and Slander Act* for two July 2007 posts on the “U of O Watch” blog about the VP-Resources and about the university president. The Defendant immediately made a claim to the University’s liability insurance and no further action was pursued by the university in the matter. The matter was reported in the media.

(9) In 2008 the Defendant was disciplined by the University of Ottawa for using images from the university’s web site on the “U of O Watch” blog, despite the university’s qualified permission to professors to use the images. The matter was grieved under the Defendant’s collective agreement and the grievances have not yet been heard in binding labour arbitration.

(10) The “U of O Watch” blog has been run with continuity in style and content since its initiation in 2007 to the present. It has regularly made allegations of administrative and professional malfeasance based on verified facts. The Defendant was never disciplined or knowingly investigated for discipline by the University of Ottawa for any of the blog’s written content.

(11) The “U of O Watch” blog has been continuously and regularly critical of powerful groups and institutions other than the University of Ottawa, such as the pro-Israel lobby in Canada and its influence on university affairs (sixteen blog posts labelled “Israel lobby” to date).

(12) The Defendant receives no direct or indirect financial benefit from the “U of O Watch” blog or from any broadcast activities and no financial benefit arising from readership or web connectivity.

(13) Contrary to the Plaintiff’s allegations, the Defendant does not and has never “taken steps” to influence the Google rankings of blog posts, nor does the Defendant have knowledge about how Google search results can be manipulated.

The SAC Report

(14) On November 12, 2008, the Student Appeal Centre (SAC) of the Student Federation University of Ottawa (SFUO) released a report entitled “Student Appeal Centre 2008 Annual Report - Mistreatment of Students, Unfair Practices and Systemic Racism at the University of Ottawa” (hereafter the “SAC Report”). Several media news articles followed the release of the SAC Report.

(15) The 16-page SAC Report, described three case studies in some detail, included four tables of data and reported that: “Out of the 48 students who consulted the Student Appeal Centre between November 1, 2007 and October 31, 2008 with cases of academic fraud, 71% were visible minorities. Arab, Black and Asian men and women – these are the students that most often get accused of academic fraud.” and “Out of the 388 students who consulted the

Student Appeal Centre, 47% were women and 45% were visible minorities." The SAC Report made seventeen "Recommendations and Demands", some of which were implemented at the University of Ottawa.

(16) The 2008 SAC Report was the first public report about systemic racism at the University of Ottawa. The University of Ottawa to this date does not have an anti-discrimination policy. In 2011 many high profile allegations of systemic racism and tribunal cases against the University of Ottawa were reported nationally and regionally in the media.

The University's counter report

(17) Following the release of the 2008 SAC Report, on the same day November 12, 2008, university president Allan Rock coordinated several University of Ottawa executives and staff, including VP-Academic Robert Major, VP-Resources Victor Simon, VP-Governance Nathalie Des Rosiers and the director of media relations, in strategizing to mitigate the public image impact of the SAC Report on the University. On November 12, 2008, the Plaintiff, law professor Joanne St. Lewis, agreed to write a critical "response". It was immediately decided to produce a counter report that would be authored by the Plaintiff.

(18) On November 16, 2008, the Plaintiff sent her "draft evaluation of the SAC report" to President Allan Rock, VP-Academic Robert Major and former University Secretary Henry Wong, with the note "I am happy to respond to any suggestions that you may have."

(19) On November 17, 2008, Robert Major informed the Plaintiff, with Allan Rock in cc, that he would circulate her "document" to colleagues of the "admin committee" and that he had the

intent of responding to the Plaintiff the next day. On the same day, Robert Major sent a request to Allan Rock and others to provide immediate feedback on the Plaintiff's document. On the same day, Allan Rock provided feedback and also explained to members of the Administrative Committee of the University and to University media relations staff how to mitigate his concern that the Plaintiff's report might not appear to be "independent."

(20) At the November 17, 2008, University of Ottawa Board of Governors meeting Allan Rock is reported by the print media as having stated "I know enough about the work that's been done to date to tell you that we're going to disagree very strongly that there's any evidence to support the allegations that have been made," in reference to the University's (Plaintiff's) evaluation of the SAC Report.

(21) On November 18, 2008, the Plaintiff sent her "final report of an evaluation of the Student Appeal Centre 2008 Annual Report" to Allan Rock, Robert Major and others, with the note "I look forward to your comments." On the same day Allan Rock approved the Plaintiff's "final report" and personally managed a communication strategy for the Plaintiff's report to obtain the broadest possible media attention, including securing media interviews for the Plaintiff. The University's media communication exercise about the Plaintiff's report continued into late November 2008 and included exchanges with the Plaintiff about media strategy and messaging content.

(22) On November 24, 2008, in a written communication to a university community member, VP-Academic Robert Major referred to the University's (Plaintiff's) evaluation as a soon to be released public evaluation "by an independent assessor".

(23) On November 25, 2008, the University of Ottawa released the Plaintiff's report about the SAC Report in a news release entitled "The University of Ottawa releases its evaluation of the Student Appeal Centre 2008 Annual Report". The news release linked to the Plaintiff's report about the SAC Report, posted on the University's corporate web site.

(24) In the first line of the Plaintiff's report about the 2008 SAC Report, dated November 15, 2008, and released November 25, 2008, the Plaintiff characterizes her report as an "independent evaluation". Misrepresentation of one's academic research is academic fraud. In a media news article published on November 26, 2008, the Plaintiff is said to have "laughed at the suggestion that she was not acting independently of the university administration" and is quoted as characterizing the charge of not being independent as a "rhetorical flourish".

(25) On November 26, 2008, Allan Rock published a post on his "Rock Talk" president's blog entitled "Evaluation Report of the Student Appeal Centre (SAC) 2008 Annual Report". Mr. Rock in his post linked to the University press release and to the Plaintiff's report but not to the SAC Report.

(26) The Plaintiff's 2008 report for the university about the 2008 SAC Report has infringed the rights of minority students to be protected from discrimination by impeding the needed institutional response and by delaying development and implementation of a needed institutional anti-discrimination policy (to the present date), thereby allowing the many egregious high-profile University of Ottawa racial discrimination cases reported in the media in 2011 to occur.

<u>December 2008 U of O Watch blog post</u>

(27) On December 6, 2008, a blog post entitled “Rock Administration Prefers to Confuse ‘Independent’ with ‘Internal’ Rather Than Address Systemic Racism” was posted on the “U of O Watch” blog:

(i) The December 6, 2008, blog post referred to the Plaintiff, in the context of her report about the SAC Report, as a “service intellectual”.

(ii) The blog post described the Plaintiff’s “attempt to pass an internal report as an independent report” as constituting “intellectual dishonesty”.

(iii) The blog post described the Plaintiff’s report about the SAC Report: as not independent,

(iv) as “far from being of professional calibre”,

(v) as “*prima facie* intended to diffuse a media and public relations image management liability for the University,” and

(vi) as having “an unprofessional tone throughout [...using a] language that is not characteristic of objectivity.”

(vii) The blog post criticized the Plaintiff’s report’s main statistical argument (about sample size) as obviously incorrect.

(viii) The blog post criticized the Plaintiff’s report’s individual recommendations variously: as “her position is the absurd one...”,

(ix) as constituting “itself systemic racism”,

(x) as pleasing the university executives,

(xi) as affirming the “position of the supremacy of western academic practice, while being insensitive to cultural diversity”, and

(xii) as being “paternalistic”.

(xiii) The blog post described the Plaintiff's report's main recommendation to obtain the SAC data as being improper, confused, contradictory, and harmful to students; the proposal was characterized as "get that SAC data and shred it so it can't hurt us any more".

(xiv) The blog post suggested that the Plaintiff in writing her report was serving her employer for illegitimately-obtained advantage as "I predict that St. Lewis is in line for a promotion to Associate Professor soon."

(28) On December 7, 2008, the Defendant, as a university colleague, made the Plaintiff aware of the December 6, 2008, "U of O Watch" post and invited comment. The Plaintiff has never directly or indirectly communicated to the Defendant about the December 6, 2008, "U of O Watch" post, nor has the Defendant ever denied or attempted to correct the December 6, 2008, "U of O Watch" post.

December 2008 SAC blog post

(29) On December 17, 2008, the SAC posted a critique of the Plaintiff's report about the SAC Report on the SAC's blog:

(i) The SAC blog post questioned the possibility that the Plaintiff's report could be "independent",

(ii) noted that the Plaintiff's report on the one hand concluded "that the SAC's data is too limited to enable any analysis supporting the Centre's claims" yet on the other hand made mostly the same recommendations as in the SAC Report, and

(iii) critiqued the asymmetry in the University's treatment of the SAC Report compared to the Plaintiff's report about the SAC Report.

(iv) The SAC blog post concluded: "*The Student Appeal Centre denounces the University of Ottawa's tactics as an attempt to discredit student voices. Professor St. Lewis' accusation of the SAC report as "methodologically flawed" not only detracts from the issues of racism and injustice on campus, but also silences the valuable student perspective on matters of appeals and the broader student/university relationship.*"

(v) In its blog post the SAC also clarified that its 388 cases were official cases and that its continuing concern about system racism was also based on "over 400 informal consultations."

The Plaintiff has never denied or attempted to correct the December 17, 2008, SAC blog post.

Plaintiff appointed to conduct university review

(30) On March 20, 2009, the Plaintiff wrote to Robert Major, Allan Rock and dean of law Bruce Feldthusen to express thanks for confirming by letter the Plaintiff's appointment by the University to "conduct a systemic review of the student academic fraud appeals process."

(31) On March 24, 2009, Robert Major wrote to the SAC asking it to provide all its data related to systemic racism to the Plaintiff to assist the Plaintiff in conducting a systemic review of the student academic fraud appeals process. The SAC refused on the basis that the university already had access to all the academic appeals data except the identities of the students in the sub-group of appellants who filed their cases with the SAC.

February 2011 SAC blog post

(32) On February 11, 2011, the SAC posted a post entitled “Freedom of Information Documents Show Joanne St.Lewis’ Lack of Independence from Central Administration” on the SAC’s blog and released access to information (ATI) records it obtained in the matter of its 2008 SAC Report. The SAC blog post stated and implied:

(i) that the Plaintiff’s report about the 2008 SAC Report was not independent,

(ii) that the Plaintiff only browsed a few lines of the SAC Report before expressing outrage and accepting to write a rebuttal,

(iii) that the Plaintiff sent a draft to both Allan Rock and Robert Major saying she was “happy to respond to any suggestions”,

(iv) that Allan Rock requested a change in wording to the Plaintiff’s draft,

(v) that Allan Rock coordinated how to make the Plaintiff’s report appear “independent”,

(vi) that the University arranged for the Plaintiff to speak on CBC morning radio about her evaluation of the 2008 SAC Report,

(vii) that Robert Major gave the Plaintiff content suggestions for her CBC radio interview,

(viii) that the Plaintiff reported back to Robert Major that she had worked in the new suggested information,

(ix) that in March 2009 the Plaintiff asked the university administration to write to the SAC “asking them to cooperate with me in the sharing of the data and reassuring them that I will be independent of the University...”.

(33) The February 11, 2011, SAC blog post concludes about the Plaintiff:

“The access to information documents show a close collaboration between the Administration and St.Lewis in elaborating the final report, in securing media access, and

in dealing with media messaging. In addition, there is troubling evidence of a cover up of the lack of independence engineered by the President himself.

Joanne St.Lewis was an untenured professor charged with a high profile task and she elaborated her final report and her media work in communication with the Administration, yet she wrote in her report that her evaluation was "independent". She knew or should have known that her high profile public report about racism in academic fraud appeals could not be characterized as independent.

The most troubling aspect of the St.Lewis exchanges with the Administration and their report is a total lack of admitting the possibility of the systemic racism or unequitable procedure indicated by the SAC report."

(34) The Plaintiff has made no attempt to deny or correct the February 11, 2011, SAC blog post on the official blog of the Student Appeal Centre of the Student Federation University of Ottawa, or to mitigate any perceived damage it directly may have caused to the Plaintiff's reputation.

February 2011 U of O Watch blog post

(35) On February 11, 2011, a blog post entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro?" was posted on the "U of O Watch" blog. The post linked to the SAC blog post of the same date and to the ATI records posted by the SAC. The post also linked to the 2008 SAC Report and to the December 6, 2008, "U of O Watch" blog post entitled "Rock Administration Prefers to Confuse 'Independent' with 'Internal' Rather Than Address Systemic Racism".

(36) The February 11, 2011, "U of O Watch" blog post makes only the following statements about the Plaintiff:

(i) that “released documents obtained by an access to information (ATI) request” “suggest that law professor Joanne St. Lewis acted like president Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university.”

(ii) that “The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration: The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page.”

(iii) “Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!).”

(37) The February 11, 2011, “U of O Watch” blog post defines the term “house negro” as it is used in the blog post by citing and directly embedding the source, a video clip from a delivery of the Malcolm X speech in which Malcolm X defined the term.

(38) The term “house negro” (and its near-equivalents such as “an Uncle Tom”) is a common criticism of Black public figures, in the public discourse reported in the media, and it has an established meaning in these contexts.

(39) The February 11, 2011, “U of O Watch” blog post opens with the statement “*February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out*

Black Americans who were and continue to be house negroes to masters." as a general statement of position regarding social criticism in issues of public interest, specifically Black liberation.

(40) The February 11, 2011, "U of O Watch" blog post closes with the statement *"When the bosses have such high professional ethics why would professors be any different?"* This statement refers to the alleged unethical behaviours of President Allan Rock and VP-Academic Robert Major described in the post and is a commentary questioning the professional ethics of all professors.

(41) The ATI records obtained by the SAC amply provide a true factual basis for all of the SAC's and the Defendent's statements about the Plaintiff and about the University of Ottawa and its officers or staff.

(42) On February 16, 2011, the Defendant posted a 261-word considered comment to the "U of O Watch" blog post of February 11, 2011, explaining that the post's use of the term "house negro" is not racist. The comment included the general affirmation:

> *"I am entitled to express my views about which black persons are "house negroes" in my opinion even if I am white. I will not be deprived of one of the most powerful and meaningful expressions of class analysis in cantonized societies."*

(43) On May 17, 2011, the Defendant received a letter threatening to sue for damages dated May 16, 2011, from the Plaintiff's lawyer Mr. Richard G. Dearden. This letter made demands about the February 11, 2011, "U of O Watch" blog post and wrongly accused the Defendant of having broadcast racist statements.

May 18 2011 U of O Watch blog post

(44) On May 18, 2011, a blog post entitled "Top dog Canadian freedom of the press lawyer targets UofOWatch blog" was posted on the "U of O Watch" blog. In the blog post, the Defendant defends against the unwarranted May 16, 2011, racist allegations as:

(i) *"I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro."*

(ii) *"She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts about U of O racism HERE."*

(45) The latter two statements were the only two statements relating to the Defendant in the blog post. The first is intended only as an explanation that a correct and non-racist use of the term "house negro" is not racist, while the second is intended only to explain the justification for this correct use of the term. The post was entirely a response to the Plaintiff's lawyer's letter dated May 16, 2011.

(46) On May 23, 2011, the Defendant was served with a notice dated May 20, 2011, from the Plaintiff's lawyer. The notice made no mention of racism and complained about the May 18, 2011, "U of O Watch" blog post, without making any reference to the *Libel and Slander Act*.

May 23 2011 U of O Watch blog post

(47) On May 23, 2011, a blog post entitled “UofOWatch update::: Richard Dearden promises to sue” was posted on the “U of O Watch” blog. The post showed an email exchange between the Defendant and the Plaintiff’s lawyer ending on May 23, 2011. The post stated about the exchange: “It also shows an aggressive lawyer not interested in discussing solutions or even providing clarifications on simple points.”

Statement of Claim posted

(48) On June 23, 2011, the Defendant was served with the Statement of Claim, Court File No.: 11- 51657.

(49) On June 23, 2011, a blog post entitled “U of O law professor Joanne St. Lewis sues Rancourt for $1 million, will give half to a law student scholarship fund” was posted on the “U of O Watch” blog. The post linked to a posted electronic copy of the Plaintiff’s Statement of Claim and quoted two paragraphs from the Statement of Claim. On and after June 24, 2011, media articles were published about the lawsuit, as were blog posts on law news and law discussion blogs.

(50) On July 12, 2011, the Defendant served and filed a Notice of Intent to Defend.

Absence of malice

(51) The Defendant denies the Plaintiff’s allegations of malice. The Plaintiff’s allegations of malice as improper motive are unfounded regarding a blog critical of the University of

Ottawa, run with continuity in style and content since 2007 when the Defendant was a Full Professor with tenure at the University of Ottawa, then (2007-2009) protected by the Defendant's academic freedom, involving strong opinions often conveyed with colourful and provocative language, informed by true and verified facts, and run for the express purpose of improving institutional behaviour on matters of public interest.

Absence of racism

(52) The Defendant denies the Plaintiff's allegations of racist statements. The Plaintiff's allegations of racist statements are frivolous, vexatious or an abuse of process; unfounded, opportunistic, and presented in the Statement of Claim in such a way as to obfuscate and conflate the legal issue of libel. There is no stated (Statement of Claim) reason or material valid legal reason to allege racist statements in this legal action. As a particular, the Defendant denies the Plaintiff's stated meanings of the phrase "house negro" as extrapolated and misguided and as inconsistent with the actual and established definition and media use in English North American society. As a particular, the Defendant denies the Plaintiff's implication that it is always unacceptable or improper for a white man to correctly use the term "house negro" in referring to the actions of a black woman; here in a media context of critical commentary in a matter of public interest, namely systemic racism and improper professional and institutional behaviour at a university.

Limitation of action

(53) The Defendant denies the words-complained-of bore the meanings alleged or any meaning defamatory of the Plaintiff.

(54) The legal action has not been initiated in a way, regarding limitation of action, which is consistent with the text, spirit and intent of the *Libel and Slander Act*. Although the threshold for establishing prima facie defamation is low, courts should not be too quick to find defamatory meaning. Triers of fact should be mindful of ensuring that the plaintiff's reputation is actually threatened by the impugned statements before turning to the available defences.

(55) The "U of O Watch" blog post of May 18, 2011, was not defamatory and was only a clarification in response to an aggressive letter (which was not a Notice pursuant to the *Libel and Slander Act*, nor was it understood to be such a Notice) alleging malice and racism. The May 18, 2011, blog post cannot reasonably on its own be liked to any harm. Yet it is the only broadcast within the limitation of action time frame of the *Act* to initiate the instant lawsuit.

(56) In addition, all of the Plaintiff's allegations of libel in the Statement of Claim relate to, stem from, and are repetitions of criticisms made publicly and discussed in the media in 2008, beyond the one-year statutory limitation of action for libel and slander. All these 2008 criticisms of the Plaintiff were made in the context of a highly publicized conflict between the Student Appeal Centre (SAC) of the student union (Student Federation of the University of Ottawa) and the University of Ottawa, were not denied or contested by the Plaintiff, and at least one criticism was admitted by the Plaintiff.

(57) Therefore, in this matter of the Plaintiff's counter report of the SAC Report, the Plaintiff's public reputation was established in the public's mind in 2008. The Plaintiff by her professional behaviour and her interactions with broadcast media in 2008 gave herself, a known Black professional woman, a widespread general reputation in the systemic racism matter of the 2008 SAC Report for serving her employer over acting along lines of strict professional ethics and responsibility. No new material allegations were broadcast in 2011.

Defence of truth

(58) In the alternative, if statements were defamatory at law, which is denied, the Defendant relies on the defence of truth for all statements, as entire statements in their contexts. The statements made as questions are true questions. The statements of explicitly expressed opinion are true statements of opinion.

Defence of fair comment

(59) In the alternative and in conjunction with the defence of truth, for all statements the Defendant relies on the defence of fair comment consisting of the following elements: (a) the comment is a matter of public interest; (b) the comment is based on fact; (c) the comment, though it can include inferences of fact, is recognizable as comment; (d) the comment satisfies the following objective test: could any person honestly express that opinion on the proved facts?

Defence of responsible reporting

(60) In the alternative and in conjunction with the defence of truth and with the defence of fair comment, for all statements the Defendant relies on the defence of responsible reporting, consistent with freedom of expression of the media in matters of public interest.

Government entity and third-party involvement – Charter

(61) In the alternative or as a preliminary matter, the legal action is improper because it constitutes an action by direct or indirect proxy, involving one or more institutions or groups and government funds or improperly used or attributed funds and/or resources.

(62) The Defendant's former employer and the Plaintiff's present employer the University of Ottawa (a public university) and/or its agents or representatives have illegally or improperly, directly or indirectly, verbally or otherwise, released the Defendant's personal and former employee information to the Plaintiff and/or to the Plaintiff's counsel.

(63) It is inconsistent with section 2(b) of the *Canadian Charter of Rights and Freedoms* for a government entity, such as a school board or university, to use government funds or tuition fee moneys, to enable a civil action for defamation by an employee – having acted improperly or contrary to professional ethics – against a citizen to inhibit justified criticism of the entity's

institutional governmental activities, including those of the employee. Universities were only granted independence status by the *Supreme Court of Canada* in order to effectively *defend* the academic freedoms of their professors and students, in order to allow protected criticisms of society's institutions including universities.

(64) It is essential that citizens be granted an absolute privilege against the threat of a civil action for defamation being initiated against them by their government (directly or by proxy).

(65) Further, in a case such as the instant one, a balance between an individual's protection against defamation and a free speech criticism (protected by the *Charter* and of a key societal public institution) cannot be achieved if the individual (the Plaintiff) benefits from improper or interested enabling third-party support.

(66) Given that half of the claimed punitive damages, which are denied, are stated (Statement of Claim) to be intended for donation to the University of Ottawa (the Plaintiff's employer), any/all facilitation, guarantees or resources from the University of Ottawa or any of its allies or partners for the instant action is/are improper.

(67) The instant action is intended to punish, intimidate and silence (the Defendant) a vocal, responsible and dedicated critic of many powerful groups, institutions and the University of Ottawa, regarding matters of public interest, and as such is frivolous, vexatious or an abuse of process.

No damages

(68) The Defendant denies that the Plaintiff has suffered any loss or damages for which he is responsible and puts the Plaintiff to the strict proof thereof.

(69) If the Plaintiff has suffered any damages or losses, which is denied, the Plaintiff has failed or refused to take proper steps to mitigate the damages or losses.

(70) The Plaintiff's damages, as claimed, are excessive, exaggerated, too remote, and unrecognized at law.

(71) The Plaintiff's damages, as claimed, are against an unemployed individual and would put the Defendant out of house and home in a matter where there is no claimed actual damage to the Plaintiff. Such asymmetry in attempted extraction of damages is frivolous, vexatious or an abuse of process; and unrecognized at law.

(72) The Plaintiff claims that half of any punitive damages would be donated to a student scholarship at the University of Ottawa (the Plaintiff's employer), named after a United States personality, without deference to the fact that the Supreme Court of Canada only allowed punitive damages in libel cases as an instrument to provide deterrence against wealthy and powerful societal individuals and corporations.

Request for dismissal

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

Tab 12-4

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

REPLY

1. The Plaintiff admits paragraphs 14, 23, 25, 48 and 50 of the Statement of Defence (the "Defence") and makes specific replies below to certain paragraphs of the Defence.

2. The Plaintiff has no knowledge of paragraphs 4-12 and 20 of the Defence and makes specific replies below to certain paragraphs of the Defence.

3. The Plaintiff denies all other allegations in the Defence and makes specific replies below to certain paragraphs of the Defence.

4. In reply to paragraph 4 of the Defence, the Plaintiff has not participated in any discussions with any member of the senior Administration of the University of Ottawa regarding any of the Administration's concerns regarding the Defendant. The Plaintiff has had no involvement in the Defendant's loss of tenure and his ongoing labour grievances with the University of Ottawa.

5. In reply to paragraph 15 of the Defence, the Plaintiff admits that the 2008 Student Appeal Centre ("SAC") report is 16 pages.

6. In reply to paragraph 16 of the Defence, the SAC report of 2008 made allegations of systemic racism against the University of Ottawa but failed in its analytical framework to demonstrate that this was indeed the case. Nevertheless, the Plaintiff's November 2008 report considered that this was a sufficiently important allegation in and of itself that it

merited that the University of Ottawa take all necessary steps to work with the SAC to conduct a full and proper analysis of the allegation in the SAC report (this was the first recommendation of the Plaintiff's November 2008 report).

7. In reply to paragraph 17 of the Defence, the Plaintiff has no knowledge of any discussions that may have taken place between University of Ottawa President Allan Rock and any of the senior Administration of the University of Ottawa on November 12, 2011. The Plaintiff denies that she agreed to write a "critical response". The Plaintiff denies that she was asked to or agreed to produce a "counter report" to the SAC's report. The November 2008 report prepared by Professor St. Lewis was an advisory report provided to the University of Ottawa's senior Administration upon its request. The Plaintiff attempted to obtain information from the SAC. The Plaintiff provided the SAC advance notice of the analytical problems in the SAC report and requested that data be provided to her that supported the SAC report. When the SAC expressed concern regarding potential privacy concerns for the student data, the Plaintiff met with SAC to suggest that if her position as a lawyer and then Bencher of the Law Society of Upper Canada was not sufficient in that regard that another lawyer at arm's length from both the SAC, the Plaintiff and the University of Ottawa could be provided with the data. The data could then be stripped of identifiers and a report subject to the SAC's approval could be provided to the Plaintiff so that she could verify the definitions used by the SAC and the SAC's interpretation of the data. There was no response by the SAC to this or any other requests for assistance made by the Plaintiff.

8. In reply to paragraph 18 of the Defence, as of November 16, 2008, the SAC had made it clear that it had no intention of providing any information to the Plaintiff regarding the preparation of the SAC report. The Plaintiff sought to ensure that insofar as she was referring to information provided by Registrar and Vice-President Robert Major that it was accurate. The Plaintiff was in no way seeking directions or approval from senior members of the Administration of the University of Ottawa about the content of her November 2008 report.

9. In reply to paragraphs 19 and 20 of the Defence, the Plaintiff had no knowledge of the conversations which allegedly took place at the Administrative Committee or the Board of Governors nor did she ever have a discussion with anyone on the Administrative Committee or the Board of Governors about the independence of her work. The Plaintiff had the requisite independence given: (a) her position as then Director of the Human Rights Research and Education Centre; (b) her established reputation in the field of human rights; and (c) her position as a fully tenured professor. The Plaintiff acted independently in the preparation and drafting of her November 2008 report. The Defendant's pleas impugning the Plaintiff's independence further aggravate the damages the Defendant has caused to the Plaintiff's reputation and are malicious.

10. Paragraph 19 of the Defence misrepresents President Rock's November 17, 2008 email regarding the Plaintiff's independence in preparing her report. President Rock's email of November 17, 2008 also states:

> "One last point, I would like Robert to be the only point of contact for us with Professor St. Lewis. Although her report is excellent, it may be criticized as not being "independent" from the administration. So far, our dealings with her have been through Robert and have been scrupulously objective. We have simply sought her view, and have imposed no limitations, constraints or conditions. She has been entirely free to say anything she wants. In order to maintain this professional and objective relationship with her, I want Robert to be the only one in communication with her. Robert can simply observe that the first recommendation seems inconsistent with her findings. It will then be up to Professor St. Lewis to decide whether to make a change. If a number of people all send emails and call, we will lose that focus of professionalism and independence."

11. In reply to paragraph 21 of the Defence, the Plaintiff states that when asked to make herself available to comment to the media about her report, the Plaintiff agreed and restricted her statements to the media to the public content of her report. The Plaintiff was in no way seeking directions or approval from senior members of the Administration of the University of Ottawa about the content of her November 2008 report.

12. In reply to paragraph 24 of the Defence, the Plaintiff denies that her November 2008 report constitutes academic fraud. The Defendant's plea in paragraph 24 that "misrepresentation of one's academic research is academic fraud" is malicious, false,

defamatory and further aggravates the damages the Defendant has caused to the Plaintiff's reputation.

13. Paragraph 24 of the Defence misrepresents the Plaintiff's position regarding the SAC report that is reported in the media news article published on November 26, 2008. In addition to the parts of the article quoted in paragraph 24, the November 26, 2008 *Ottawa Citizen* article also reports:

> (i) "But Ms. St. Lewis also recommends that the university assess whether systemic racism plays any part in its process for handling academic fraud. "The fact that the report did not succeed in its methodological attempts does not mean that there is not a problem that should be addressed", she wrote."
>
> (ii) "She [the Plaintiff] concluded her report with 10 recommendations, including that the university and the Student Appeal Centre work together to determine whether systemic racism plays any part in the academic fraud process. "Perhaps even with such a small pool there is something worthy of investigation and analysis," she said. Student Appeals Centre coordinator Mirelle Gervais dismissed Ms. St. Lewis' criticism, saying she stands by the centre's report. It is a typical institutional response to deny the problems we are witness to on a daily basis", she said, adding that the report is not scientific, but based in the Centre's experience meeting with hundreds of individual students. "We are witness to the fact that visible minorities are more likely to run into problems through the appeal process".
>
> Ms. St. Lewis laughed at the suggestion she was not acting independently of the university administration. "This is my area of expertise," she said. "This is what I do… What she (Ms. Gervais) should be actually tackling is not a rhetorical flourish that says I'm not independent; she should be tackling the substance of what I said in the report and rebut the substance".

The Plaintiff states that, as of the date she prepared her report, she had been serving as a Bencher of the Law Society of Upper Canada, the governing body for over 41,000 lawyers in Ontario and was then the Chair of its Equity and Aboriginal Issues Committee. The Plaintiff had been recognized by her peers in the Canadian Association of Black Lawyers for her outstanding contributions to the community and the legal profession. She had also contributed to a number of similar analyses, including providing an independent assessment of the Indigenous Black and Mi'kmaq Program at Dalhousie Law School. In

this context and given her well-established reputation for advocacy, the Plaintiff would not be concerned about acknowledging racism within her own institution if it existed. The Defendant's malicious attack on the Plaintiff's independence further aggravates the damages he has caused to the Plaintiff's personal and professional reputation.

14. In reply to paragraph 26 of the Defence, the Plaintiff denies that her report infringed on the rights of minority students to be protected from discrimination or in any way impeded an institutional response to racism at the University of Ottawa. The Plaintiff's November 2008 report asked the University of Ottawa to cooperate with the SAC to conduct a systemic analysis to identify the scope (if any) of systemic racism in its academic fraud process. The SAC must take responsibility for any aspects of its report that inadvertently stereotyped international students based on its miniscule pool of students relied upon for the findings of the SAC report and in contradiction of the significant number of international students who had no difficulty operating within the academic fraud policy of the University of Ottawa in the submission of their work.

The Plaintiff's November 2008 report did not infringe the rights of minority students to be protected from discrimination. The Plaintiff's November 2008 report did not allow "many egregious high-profile University of Ottawa discrimination cases" to occur in 2011. The Defendant's plea in paragraph 26 contains malicious, false and defamatory statements that aggravate the damages the Defendant has caused to the Plaintiff's reputation.

15. In further reply to paragraph 26, Professor St. Lewis provided an advisory report to the Vice-President Academic (Robert Major) upon the request of the President of the University of Ottawa (Allan Rock). The purpose of the Plaintiff's report was to inform the University of Ottawa about the accuracy or not of the SAC report. To characterize the SAC report as determinant of the scope of the University's obligations to its students in the area of systemic racism would fall far short of the University's obligations under the *Ontario Human Rights Code*. The SAC's analysis, the minuscule pool of students relied upon by the SAC, and the understanding of the actual academic fraud process was inadequate to form such a prescriptive. The Plaintiff's November 2008 report was simply

an analysis of the SAC's report. The Plaintiff does have the requisite expertise to have provided the University of Ottawa with a comprehensive plan to address the issue of systemic racism (including advice on the design of an anti-discrimination policy) but this was not part of the request made of the Plaintiff by President Rock in November 2008.

The SAC report was focused on the practices of the University of Ottawa in the Administration of its student academic fraud processes. No aspect of the SAC report or the analysis by the Plaintiff purported to address possible systemic racism in any other areas of the University's activities and responsibilities. Responsibility for the development of a University-wide anti-discrimination policy rests solely with the senior Administration of the University of Ottawa.

16. In reply to paragraph 27 of the Defence, the Defendant made no attempt to speak to the Plaintiff prior to publishing his blogpost of December 6, 2008. The Defendant's blogpost contains unfounded statements that go much further than the statements of the SAC's report upon which he claims to rely.

17. In reply to paragraph 28 of the Defence, the issues in this action are the Defendant's racist and defamatory statements about the Plaintiff and his personalized racist focus on the Plaintiff in his blogpost of February, 2011 and thereafter.

18. In reply to the statement in paragraph 29 that "the Plaintiff has never denied or attempted to correct the December 17, 2008 blogpost", the Plaintiff states that she has been very deliberate in confining her comments to her publicly available report of November 2008. The Plaintiff has no obligation to acknowledge the Defendant's statements about her November 2008 report or to contribute to his blogpost. It has remained open to the SAC to follow up on the Plaintiff's advisory report to inquire as to the status of the recommendations in the Plaintiff's November 2008 report or to submit additional reports to the University of Ottawa calling for further action. There has been no additional public report by the SAC since its initial report released in November 2008.

19. In reply to paragraphs 31 and 32 of the Defence, the Plaintiff did initially agree to conduct the systemic review that followed from the first recommendation in her

November 2008 report. When it became clear to the Plaintiff that the University would receive no cooperation from the SAC, the Plaintiff declined to undertake the review because it was not possible for her to properly undertake the implementation of the first recommendation in her November 2008 report.

20. In reply to paragraph 32 of the Defence, the Plaintiff denies that the records posted on the Defendant's blog of February 2011 demonstrates any lack of independence on her part. The Plaintiff acted independently in preparing her report. The Defendant's plea in paragraph 32 of the Defence that the Plaintiff lacked independence is malicious and further aggravates the damages the Defendant has caused to the Plaintiff's reputation.

21. In reply to paragraphs 33 and 34 of the Defence, the Plaintiff states that these pleas further aggravate the damages the Defendant has caused to the Plaintiff's reputation. The Plaintiff acted independently from the University of Ottawa's Administration in preparing and drafting her report.

22. In reply to paragraph 35 of the Defence, the Plaintiff admits the Defendant published the February 11, 2011 blog entitled "Did Professor St. Lewis act as Allan Rock's house negro?"

23. In reply to paragraph 36 of the Defence, the Plaintiff states that the Defendant has further aggravated the damages to her reputation by pleading that he "only" made the statements set out in paragraph 36. The Defendant refuses to recognize the gravity and seriousness of the false and defamatory statements he has maliciously published about the Plaintiff.

24. In reply to paragraph 37 of the Defence, the Plaintiff admits that the Defendant included a link to a videoclip of a Malcolm X speech and denies the remainder of paragraph 37.

25. The Plaintiff denies paragraphs 38 and 39 of the Defence.

26. The Plaintiff denies the meaning of the statement quoted in paragraph 40 of the Defence. Further, the meaning pleaded in paragraph 40 aggravates the damages the Defendant has caused to the Plaintiff's reputation by impugning the Plaintiff's professional ethics as a law professor.

27. The Plaintiff denies paragraph 41 of the Defence. The plea that the Defendant's statements about the Plaintiff are true further aggravates the damages the Defendant has caused to the Plaintiff's personal and professional reputation.

28. In reply to paragraph 42 of the Defence, the Plaintiff states that the defamatory statements published by the Defendant on February 16, 2011 were not "comments" and were not "considered". The plea in paragraph 42 aggravates the damages the Defendant has caused to the Plaintiff's reputation by maintaining that the Plaintiff is a "house negro". The term "house negro" as published by the Defendant about the Plaintiff is racist, subjects the Plaintiff to ridicule and is a malicious attack by the Defendant on the Plaintiff's personal integrity and professional reputation.

29. In reply to paragraph 43 of the Defence, the Plaintiff denies the Defendant's characterization of the May 16th letter written by her counsel. The May 16th letter was clear notice to the Defendant that he maliciously published false, defamatory and racist statements about the Plaintiff that had to be taken down from his blog immediately. Further, the plea in paragraph 42 of the Defence aggravates the damages the Defendant has caused the Plaintiff by pleading that he was wrongly accused of broadcasting racist statements.

30. In reply to paragraph 44 of the Defence, the Plaintiff admits that the Defendant published the May 18, 2011 blogpost entitled "Top Dog Canadian freedom of the press lawyer targets U of O Watch blog". The Plaintiff states the plea in paragraph 44 aggravates the damages the Defendant has caused to the Plaintiff's personal and professional reputation by taking the position that the Plaintiff's claim that he made racist allegations was unwarranted.

31. In reply to paragraph 45 of the Defence, the Plaintiff denies the meaning and explanations pleaded. The Defendant's plea that the statements published in his May 18th blogpost were the "only" two statements relating to the Plaintiff further aggravates the damages he has caused to the Plaintiff's reputation. The Defendant refuses to recognize the gravity and seriousness of the false and defamatory statements he has maliciously published about the Plaintiff in his May 18th blog.

32. The Plaintiff denies paragraph 46 of the Defence.

33. The Plaintiff admits the Defendant published the May 23, 2011 blogpost entitled "U of O Watch Update: Richard Dearden promises to sue". The Plaintiff denies the last sentence of paragraph 47 of the Defence.

34. In reply to paragraph 49 of the Defence, the Plaintiff admits the Defendant posted the Statement of Claim herein on his U of O Watch blog. The Plaintiff states the Defendant caused further damage to her reputation by posting the Statement of Claim and Statement of Defence herein on his blog so he could generate media reports and on-line communications that disseminated his defamatory statements to a broader audience than the audience that followed his U of O Watch blog.

35. The Plaintiff denies paragraph 51 of the Defence. Further, the Defendant has aggravated the damages he has caused to the Plaintiff's personal and professional reputation by pleading that his defamatory statements are "true and verified" facts. The Defendant refuses to recognize the gravity and seriousness of his false and defamatory statements about the Plaintiff and maliciously maintains that those statements are true.

36. The Plaintiff denies paragraph 52 of the Defence. The Defendant has falsely accused the Plaintiff of an "abuse of process" and being "opportunistic". The Defendant maliciously maintains that his defamatory statements that the Plaintiff acted as a "house negro" were acceptable in Canada and it is the Plaintiff who is misguided. The plea in paragraph 52 aggravates the damages the Defendant has caused to the Plaintiff's personal and professional reputation.

37. The Plaintiff denies paragraph 53 and 54 of the Defence.

38. The Plaintiff denies paragraph 55 of the Defence. The plea in paragraph 55 aggravates the damages the Defendant has caused to the Plaintiff's reputation.

39. The Plaintiff denies paragraph 56 of the Defence.

40. The Plaintiff denies paragraph 57 of the Defence. The Plaintiff's report was not a "counter report" of the SAC report. The Defendant's plea in paragraph 57 of the Defence

aggravates the damages he has caused to the Plaintiff by falsely stating that she served "her employer over acting along lines of strict professional ethics and responsibility". The Plaintiff did not breach the Code of Professional Conduct which bound her as a lawyer. She in no way behaved contrary to accepted norms of academic conduct. There was no ethical breach committed by the Plaintiff in any aspect related to her report of November 2008. The plea in paragraph 57 is particularly egregious and damaging to the Plaintiff's professional reputation in that the Plaintiff was a Bencher of the Law Society of Upper Canada at the time she prepared her report.

41. The Plaintiff denies paragraph 58 of the Defence. The plea in paragraph 58 aggravates the damages caused to the Plaintiff's reputation by claiming the statements the Defendant published about her were true and not defamatory. The Defendant refuses to recognize the gravity and seriousness of the false and defamatory statements he has maliciously published about the Plaintiff. The Defendant refuses to apologize. The Defendant refuses to take down the defamatory publications. The Defendant's malicious conduct warrants substantive awards of punitive damages and aggravated damages.

42. The Plaintiff denies paragraph 59 of the Defence. The defence of fair comment has no application to the defamatory statements published by the Defendant about the Plaintiff. In addition, even if the Defendant could rely on the defence of fair comment, the defence is defeated by the Defendant's malice.

43. The Plaintiff denies paragraph 60 of the Defence. The defence of public interest responsible communication has no application to the defamatory statements published by the Defendant about the Plaintiff. The defence is not available to malicious libel defendants. The publications in issue are totally irresponsible and the antithesis to the type of publications the defence was created to protect.

44. The Plaintiff denies paragraph 63 of the Defence. The plea in paragraph 63 aggravates the Plaintiff's damages by again accusing her of acting improperly or contrary to professional ethics.

45. The Plaintiff denies paragraphs 64, 65 and 66 of the Defence.

Joanne St. Lewis

Plaintiff

- and -

Denis Rancourt

Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

REPLY

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Counsel for the Plaintiff

N° de dossier: 11-51657

COUR SUPÉRIEURE DE JUSTICE

(DIVISION CIVILE)

Tab 13-2

E N T R E :

JOANNE ST. LEWIS

(Demanderesse)

E T

DENIS RANCOURT

(Défendeur)

****

M O T I O N S

ENTENDUE DEVANT L'HON. JUGE ROBERT N. BEAUDOIN
Mardi le 24 juillet 2012 à Ottawa

****

(Tome II)

Comparutions:

R. Dearden — Avocat pour la Demanderesse

D. Rancourt — Pour lui-même

À l'ordre. Levez-vous.

LA SÉANCE EST SUSPENDUE (10h33)

À LA REPRISE : (10h50)

LE TRIBUNAL: M. Rancourt, je tiens à souligner qu'il n'y a, à mon avis, aucun conflit entre moi et l'Université d'Ottawa à cause d'une bourse qu'on a créé à la mémoire de mon fils.

Mr. Rancourt, I want to tell you quite sincerely that there is no conflict between myself and the University of Ottawa because of a scholarship in the memory of my son – created in the memory of my son.

Il n'y a pas de possibilité d'annuler cette bourse.

There is no possibility of cancelling this scholarship.

C'est un contrat qui était conclu entre moi, le gouvernement de l'Ontario, qui a également contribué en fonds sommes égales, l'établissement de cette bourse.

It is a contract that was contracted between myself, the Government of Ontario, who also contributed an equal amount of money to the establishment of this scholarship.

Pas de possibilité d'annuler cette bourse. Il y a pas de conflit d'intérêts.

There is no possibility of this being cancelled, this scholarship. There's no conflict of interest.

Par contre, je trouve que votre geste ce matin en me remettant une copie de cette article qui existe depuis trois mois….

However, I find that your conduct this morning, by giving me a copy of this article that has been available for the last three months….

Et vous faites ça souvent, hein? Vous arrivez à la dernière minute. Vous vous prétendez, "Je viens de découvrir." C'est un truc favori chez vous.

You do that often. You arrive at the last minute. You pretend, "I've just discovered." It's one of your favourite tricks, isn't it?

Pourtant, c'était dans le grand public depuis trois mois.

However, it's been available to the members of the public for three months – over three months.

Et vous tenez non seulement à lire le paragraphe qui fait référence à la bourse, vous tenez à souligner l'angoisse que j'éprouve toujours auprès de la mort de mon fils.

And you insist not only in reading the paragraph that refers to the scholarship, you underline the anguish that I am still dealing with as a result of the death of my son.

Jamais, jamais de ma carrière juridique, que j'ai vu un geste aussi écœurant, provoquant, et complètement indigne. Vous aurez pu faire ça. Pour…

Never, never in my legal career have I seen such a dispicable action, provocative, completely unbecoming. You could do that,...

M. RANCOURT: M. le Juge, je....

Your Honour….

LE TRIBUNAL: …prendre mon angoisse et me le jeter en face comme ça…

…take my anguish and throw it in my face.

M. RANCOURT: M. le Juge, c'est….

Your Honour….

LE TRIBUNAL: …j'ai, malheureusement….

I have, unfortunately….

M. RANCOURT: Vous…. Vous….

LE TRIBUNAL: Vous avez réussi. Vous avez réussi, M. Rancourt. Je ne peux plus continuer à présider dans votre présence. Je serais incapable. Vous avez réussi.

You have succeeded, Mr. Rancourt. You've succeeded. I cannot continue to preside in your case. I will be incapable. You have succeeded, sir.

Vous m'avez provoqué tellement avec ce geste le plus pénible on aurait pu m'imposer, que je suis incapable d'être juste envers….

You have provoked me to such an extent with this action, the most painful that I could have been asked to deal with, I can't – I can't be just towards you.

Il faudra trouver un autre juge présider, acquitter frais, des frais dépens de cette présence aujourd'hui.

A new judge will need to be found to preside over this action and that will deal with the cost of your attendance today.

M. RANCOURT: M. le Juge, je dois signaler….

COURT SERVICES OFFICER: Order. All rise.

À l'ordre. Veuillez-vous lever.

M. RANCOURT: M. le Juge....

Your Honour….

LA SÉANCE EST LEVÉE (10h54)

****

N° de dossier: 11-51657

COUR SUPÉRIEURE DE JUSTICE

(DIVISION CIVILE)

Tab 13-5

E N T R E :

JOANNE ST. LEWIS

(Demanderesse)

E T

DENIS RANCOURT

(Défendeur)

****

M O T I O N S

ENTENDUE DEVANT L'HON. JUGE ROBERT N. BEAUDOIN
Mardi le 24 juillet 2012 à Ottawa

****

(Tome II)

Comparutions:

R. Dearden — Avocat pour la Demanderesse

D. Rancourt — Pour lui-même

M. RANCOURT: Je n'ai pas fait mon argument.

I did not even….

LE TRIBUNAL: Nous procédons.

We are going to proceed.

M. RANCOURT: J'ai lu…

LE TRIBUNAL: Nous procédons.

M. RANCOURT: ...quelques pages.

THE COURT: Go ahead with….

M. RANCOURT: Vous avez une entente financière avec l'Université d'Ottawa.

You have a financial agreement with the University of Ottawa.

Il y a une bourse au nom de votre fils. L'Université d'Ottawa a dû approuver cette entente financière. Elle peut annuler cette entente financière. Et vous avez exprimé publiquement, M. le Juge, que c'est – c'est…

There is a scholarship in the name of your son. The University of Ottawa had to approve that financial arrangement and can annul that financial arrangement. And you publicly expressed that...

LE TRIBUNAL: Je répète….

I will repeat….

M. RANCOURT: …c'est important pour vous.

LE TRIBUNAL: M. Rancourt, je répète: votre motion pour un ajournement est refusée. Refusée. Continue.

M. Rancourt, I will repeat: your motion for an adjournment is denied. Denied.

M. RANCOURT: Et donc est-ce qu'on….

And therefore….

LE TRIBUNAL: Est refusée.

Denied.

M. RANCOURT: Oui. Est-ce que on….

Yes.

LE TRIBUNAL: Motion d'ajournement – refusée.

Your adjournment motion is refused.

M. RANCOURT: J'avais….

LE TRIBUNAL: Refusée!

It's refused.

M. RANCOURT: D'accord. J'ai compris.

I understood, Your Honour.

M. le Juge, je tiens à signaler que vos....

Your Honour, I would like to….

LE TRIBUNAL: Je prends une pause, et quand je reviens, dans 15 minutes, si vous osez continuer cette attaque personnelle contre moi en évoquant la mémoire de mon fils, je vais vous reconnaître en outrage au Tribunal. Nous procédons, dans un retard de 15 minutes, avec la motion pour les refus.

I will take a recess, and when I come back, in 15 minutes, if you dare continue this personal attack against me invoking the memory of my son, I will find you in contempt of court, sir. We are going to proceed, with 15 minutes' delay, with the motion to deal with the refusals.

CLERK OF THE COURT: Court is now in recess.

COURT SERVICES OFFICER: Order. All rise.

FILE NO. 11-51657

SUPERIOR COURT OF JUSTICE

Tab 13-7

BETWEEN:

JOANNE ST.LEWIS

v.

DENIS RANCOURT

TRANSCRIPT OF PROCEEDINGS

BEFORE:

Mr. Justice Robert J. Smith

APPEARANCES:

Mr. R. Deardon	for the Applicant
Mr. D. Rancourt	for the Respondent
P. Doody	for Ottawa University
R. Blackburn-Merengo	Registrar
R. Commodore	Reporter

Held at
Courtroom 21
161 Elgin
Ottawa, Ontario

Date
December 13, 2012

d’ajournement.

M. RANCOURT: La décision ---

LA COUR: Cinq minutes. Monsieur le greffier ---

M. RANCOURT: La décision du Juge Annis ---

LA COUR: --- prends le temps.

M. RANCOURT: --- était finale.

Sur ce point, Monsieur Doody est d’accord avec moi dans son factum. Il dit que c’est une décision finale.

Toutes les questions -- voici -- voici la chose centrale: Toutes les questions qui traitaient de motifs impropres pour la maintenance et la champartie dans l’action ont été refusées. Il y avait des témoins de l’Université d’Ottawa qui incluaient Monsieur -- Monsieur Giroux, la Plaignante. Il y avait Bruce Feldthusen, le Doyen de la Faculté; il y avait Allan Rock, le Président de l’Université; il y avait Céline Delorme, une avocate.

Tous ces avocats ont refusé toutes les questions. Je pense qu’il y avait une centaine de questions qui parlaient des motifs impropres de la maintenance et de la champartie.

Ces refus ont été soutenus par le Juge Beaudoin dans ses décisions et j’ai demandé que toutes ces décisions du Juge Beaudoin soient enlevées sur la base de crainte raisonnable de partialité.

Ma demande d’une détermination judiciaire de la question « crainte raisonnable de partialité » a été refusée sur toute la ligne, à trois reprises, monsieur le juge.

J’ai fait une première demande pour cette détermination-là pendant la motion en cours avec le Juge Beaudoin. J’ai demandé d’ajourner pour venir amener une motion pour qu’il se récuse pour raison de crainte raisonnable de partialité. Ça c’était la première fois.

La deuxième fois, j’ai -- et, en plus, j’ai demandé au Juge-en-chef Hackland à plusieurs reprises de m’aider, de me diriger, de m’aider à faire cette motion-là.

Ensuite, j’ai posé une motion pour une détermination -- qui cherchait une détermination de crainte raisonnable de partialité devant la même Cour dans laquelle vous êtes et dans laquelle était le Juge Beaudoin et vous avez refusé d’entendre cette motion-là. Deuxième refus.

Et troisièmement, je suis allé en « leave to appeal » et avec le Juge Annis. Il a refusé d’entendre -- de me donner la chance de, éventuellement, obtenir une détermination sur la question « crainte raisonnable de partialité ».

Cette dernière demande était, effectivement, finale. Monsieur Doody, dans son factum, à la page 12 au paragraphe 31, dit que c’est une décision finale.

Le résultat c’est que ma demande -- le résultat -- et c’est ça qui est important -- le résultat c’est que ma demande d’une détermination judiciaire pour crainte raisonnable de partialité n’a jamais été entendue sur ses mérites devant les instances qui pouvaient la déterminer.

Ceci a un impact majeur sur l'évidence à laquelle j'ai accès pour ma motion pour champartie.

Et sur les critères de détermination de la question « maintenance et/ou champartie », ça l'a un impact sur les critères de détermination, les critères que va utiliser la Cour pour déterminer la question « maintenance et champartie ». Ça l'a un impact là-dessus aussi.

Mais plus important, monsieur le juge, c'est que cette possibilité que a la Cour -- cette Cour -- d'éviter une question, une plainte de crainte raisonnable de partialité est d'une -- est d'une importance nationale et touche l'intégrité profonde du système juridique canadien en son entier.

Le résultat d'avoir évité ou contourné une détermination juste et nécessaire de ma plainte de crainte raisonnable de partialité est fondamentale au système de justice entier et beaucoup plus important que l'action immédiate de diffamation pour un article sur un 'blog'.

Je demande, donc, un ajournement de la motion immédiate, ma motion pour champartie -- c'est ma motion -- pour me permettre de faire ma demande de permission d'appel à la Cour suprême du Canada sans que cela soit préjudiciable contre moi dans cette motion en cours de champartie qui serait, autrement -- la motion de champartie serait autrement gravement défectueuse en termes de justice procédurale et en termes d'une saine administration de la justice.

D’ailleurs, un coup d’œil rapide -- et ça c’est un point important, monsieur le juge -- un coup d’œil rapide aux factums des parties opposantes montre bien à quel point leurs arguments dépendent de façon centrale sur les décisions, et procédurales et de fond, -- les décisions de procédure et de fond -- du Juge Robert Beaudoin dans la motion pour champartie.

Vous n’avez qu’à regarder le factum de Monsieur Doody, les pages 3 à 12, les paragraphes 7 à 31. Il n’arrête pas de parler des décisions du Juge Beaudoin et de leur -- et comment il les utilise.

Vous reprenez ensuite le factum de Monsieur Doody, les pages 21 à 22, les paragraphes 47 à 51, il parle encore des décisions du Juge Beaudoin sur lesquelles il s’appuie pour faire ses différents arguments.

Ensuite, vous regardez le factum de Maître Deardon, à la page 27, au paragraphe 86 -- et si on a quelques minutes, j’aimerais qu’on regarde ça. Est-ce qu’on peut?

LA COUR: Bon, là, c’est cinq minutes ---

M. RANCOURT: Non?

Alors, je vais dire ceci à propos de ce paragraphe 86: Ici, cette proposition centrale dans la motion, c’est-à-dire le motif de Allan Rock, n’est pas vérifiable en justice à cause des décisions d’accès à l’évidence du Juge Beaudoin.

Le Juge Beaudoin, dans ses décisions, ne m’a pas permis des questions qui étaient nécessaires pour évaluer de façon juste et correcte les

motifs du Président Allan Rock pour maintenir l'action de la Plaignante. Je n'ai pas eu accès à ces -- à ces informations-là.

Et donc, vous voyez que les décisions du Juge Beaudoin ont limité complètement mon accès à l'information et à l'évidence dont j'aurais de toute justice droit et dont j'avais besoin et a aussi limité l'interprétation, le contexte dans lequel on va interpréter champartie et maintenance.

Et c'est pour ces raisons qu'on ne peut pas continuer tant que cette question de crainte raisonnable de partialité n'a pas été résolue par la Cour suprême.

LA COUR: Merci.

Now, response?

MR. DEARDON: Yes, Your Honour.

First of all, Your Honour, my letter to the Court on December the 11th, paragraph 1, that Mr. Rancourt takes issue with where I tell him that it's our position that the Supreme Court has no jurisdiction was, of course, cc'd to him.

He was fully aware of the communication and it is in response to the confirmation of motion that he served at the 11th hour on Monday morning.

Your Honour, I have in the factum, paragraph 10 -- that's Professor St. Lewis' factum -- a decision of *Skokol v. Petronix Research* (ph) where the Court held -- this is Justice Brown held that:

"The Rules of civil procedure apply equally

d’aussi important que se faire nier une décision juridique pour crainte raisonnable de partialité.

C’est incroyable. Quel juge d’une cour inférieure va oser dire que la Cour suprême du Canada n’a pas la juridiction pour entendre cette chose qui touche au fond tout le système juridique?

Je trouve ça vraiment surprenant des arguments comme ça.

Voilà, monsieur le juge.

--- L’audience est suspendue à 10h53

--- L’audience est reprise à 11h00

THE COURT: I’m going to give my decision in English. I’ve written it, it may be translated into French if the parties wish.

So Mr. Rancourt seeks an adjournment of his champerty motion. This motion was first brought in January of 2012 and extensive motions for refusals on cross-examinations over the past 11 months or so have been held.

The motion was not set -- was set to be heard in August, late August, of this year but was adjourned due to Mr. Rancourt’s raising the issue of bias because Justice Beaudoin had established a bursary in memory of his late son. The date was then set for today at a case management conference before myself.

The main reason given by Mr. Rancourt for his request for an adjournment is to allow him to seek leave to appeal from Justice Annis’ decision denying him leave to appeal from Justice Beaudoin’s decisions and he seeks leave to appeal

to the Supreme Court of Canada.

Mr. Rancourt argues that he was denied procedural justice by Justice Beaudoin in his decisions on his refusals motion for -- he refused to allow him to ask further questions of representatives of the University of Ottawa.

He sought leave to appeal from this decision of Justice Beaudoin and was unsuccessful.

I find that the administration of justice would be brought into disrepute if a further adjournment was granted, for the following reasons: Mr. Rancourt has brought no application for leave to appeal and I also find, as I've advised Mr. Rancourt on at least three occasions, that the likelihood of him being granted leave to appeal to the Supreme Court of Canada is very unlikely.

Second, there's no application for a stay pending Mr. Rancourt's further appeal.

Thirdly, the section of the *Supreme Court Act* relied on by Mr. Rancourt, which is section 40(1), permits an appeal with leave from the Supreme Court of Canada from a final order of the Federal Court of Appeal or at the highest court of final resort in a province.

The highest court in the province of Ontario where we are located is the Ontario Court of Appeal and Justice Annis is a judge of the Superior Court and not of the Ontario Court of Appeal.

So it's very unlikely that that section would be applicable.

And finally, the parties are prepared and have filed all their factums and documents which are before me and I also find that there would be no denial of procedural fairness to have this motion argued as it has been set and has been pending for some 12 -- 11 or 12 months.

So the motion for an adjournment is dismissed.

M. RANCOURT: Monsieur le juge, est-ce vous me permettez de signaler peut-être des erreurs factuelles dans ce que vous avez dit?

LA COUR: Non. Non.

Procédez.

M. RANCOURT: La prochaine question c'est, si on veut, ma motion pour que cette motion soit amenée à procès.

LA COUR: Et ça, ça va être une partie de votre -- vos représentations dans votre motion. Mais je veux pas entendre -- au tout, c'est pas une matière préliminaire.

Donc, selon vous, ça devrait être un procès pour déterminer une question. Je vais vous entendre ---

M. RANCOURT: Oui.

LA COUR: --- mais ça c'est -- ça fait partie de votre représentation.

M. RANCOURT: Donc, vous voulez que -- entendre ça au début -- au début de la motion comme telle.

LA COUR: Au début et à la fin.

M. RANCOURT: Parce que ce que je vais -- non, ça peut pas être à la fin parce que je demande ---

LA COUR: Oui.

M. RANCOURT: --- que la motion ne soit pas faite sous cette forme sur papier ---

LA COUR: Oui.

M. RANCOURT: --- mais qu'elle soit faite sous forme procès.

LA COUR: O.k.

M. RANCOURT: Donc, c'est évident que cette question doit être entendue en premier.

LA COUR: Ça c'est à vous. Ça c'est à vous. Je suis pas pour rendre une décision sur ces questions préliminaires avant d'entendre la motion.

Je vais prendre cet argument en délibéré avec toute fort probable cette motion.

Donc, ça fait partie de un de vos arguments. On devrait pas le faire de cette manière comme vous l'avez faite. C'est votre motion mais, selon vous, c'est une erreur, que vous avez pris la mauvaise approche.

Donc, ça fait un an que ça traîne cette motion et, selon vous, vous avez fait les mauvaises démarches. Mais ça, ça fait partie un de vos arguments.

M. RANCOURT: Non, non.

LA COUR: Non, non, non, je suis pas pour donner une décision sur ces questions-là mais ça compte dans votre temps pour votre -- votre motion.

M. RANCOURT: O.k., je veux juste -- là, j'ai besoin d'un peu de clarification. Je veux m'assurer que vous me comprenez et que je vous comprends.

LA COUR: Oui.

M. RANCOURT: Alors ---

LA COUR: Allons-y, c'est ça j'essaye de vous dire.

M. RANCOURT: Oui, oui, oui.

LA COUR: Procédez avec votre motion.

M. RANCOURT: Je comprends ce que vous voulez dire mais je veux d'abord comprendre cette question par rapport à un procès parce que il y a une règle dans les Règles de procédures qui est claire ---

LA COUR: C'est un de vos -- c'est un de vos arguments, je vais prendre ça en délibéré.

M. RANCOURT: Ce que vous dites ---

LA COUR: Avec toutes les autres.

M. RANCOURT: Je veux bien comprendre. Ce que vous dites c'est que vous ne voulez pas prendre une décision d'aller en procès avant d'avoir entendu la motion telle que prévue initialement.

LA COUR: Toute -- toute, la motion ---

M. RANCOURT: Oui?

LA COUR: --- puis, selon vous, ça devrait pas être une motion. La motion vous avez portée, si j'ai compris, là vous -- maintenant, vous dites que ça devrait pas être une motion, ça devrait être un procès; c'est ça?

M. RANCOURT: Cette -- oui, il y a une règle qui permet que la -- qu'une motion ---

LA COUR: Donc, je vais vous entendre -- je vais vous entendre.

M. RANCOURT: Oui. Merci, alors je passe à cet argument. Oui.

LA COUR: Ça fait partie -- oui, ça fait partie

de votre motion.

M. RANCOURT: Oui.

LA COUR: Alors, il reste une heure et demie.

M. RANCOURT: Donc, je vais faire ces arguments-là et ces arguments, de toute façon, si vous choisissez de ne pas -- de refuser ce que je demande ---

LA COUR: Oui?

M. RANCOURT: --- les arguments sont applicables directement à la motion principale.

LA COUR: Oui, c'est ça. Exactement.

M. RANCOURT: Donc, c'est logique que je fasse ça d'abord; d'accord?

LA COUR: C'est à vous, oui.

M. RANCOURT: Merci.

Alors, je vais -- je vais faire ça.

(COURTE PAUSE)

M. RANCOURT: Alors, je veux d'abord parler du contexte légal précis dans lequel je demande qu'un issue ou une question soit portée en procès.

Prenons -- donc, c'est juste une courte introduction là mais si je prends le factum de l'Université d'Ottawa, le factum de Monsieur Doody, et je vais à la page 27 de ce factum, le paragraphe 64.

Alors, Monsieur Doody a titré ce paragraphe ou cette section-là:

« An action can only be stayed for champerty and maintenance where it is trafficking in litigation. »

Est-ce que vous avez le factum, monsieur le

that accusation.

LA COUR: --- on peut pas le dire sans ---

M. RANCOURT: O.k. O.k., je retire si c'est -- c'est pas important.

MR. DEARDON: There's nothing ---

M. RANCOURT: C'est pas important.

MR. DEARDON: Not important? You just slandered me, sir.

M. RANCOURT: Non, je crois pas.

MR. DEARDON: The Dean says:

"I've been looking at it all along."

I didn't say that, he had the affidavit in front of him. Shame on you, Mr. Rancourt.

M. RANCOURT: Non, quelqu'un -- il s'est rendu là d'une façon ou d'une autre.

MR. DEARDON: Shame on you.

M. RANCOURT: Il s'est rendu là d'une façon ou d'une autre, l'affidavit.

De toute façon, monsieur le juge, vous voyez bien que -- que il a répond de façon sincère et spontanée au début et, ensuite, en pensant, après un 'break', et cetera, il a repris sa réponse.

Donc, c'est ça le -- c'est ça, comme ça qu'on complète la chose.

Donc, c'est pour ça qu'on a besoin d'un procès.

LA COUR: O.k.

M. RANCOURT: C'est pour ça qu'on a besoin d'un procès, monsieur le juge, c'est pour justement évaluer ces questions-là.

LA COUR: O.k. Donc, c'est tout. Vous aurez votre droit de réplique.

We'll adjourn until 2:00 and we'll have Mr. Deardon who will be up to bat.

THE REGISTRAR: Order, all rise. À l'ordre, levez-vous.

--- Upon recessing at 1:10 p.m.

--- Upon resuming at 2:05 p.m.

THE REGISTRAR: Order, all rise. À l'ordre, levez-vous.

The Court has reconvened. Please be seated. Good afternoon, Your Honour.

MR. DEARDON: Good afternoon, Your Honour. Your Honour, I've handed you two ---

M. RANCOURT: Monsieur le juge, avant de commencer -- avant de recommencer, j'aimerais juste prendre une minute pour exprimer la raison de mon objection de la procédure de cet après-midi.

MR. DEARDON: No.

LA COUR: Non.

M. RANCOURT: Parce que ---

LA COUR: Non, Monsieur Rancourt, assoyez-vous. Vous avez eu votre temps et vos chances. Merci.

M. RANCOURT: Je n'ai pas pu présenter ---

LA COUR: Non.

M. RANCOURT: --- mes arguments.

LA COUR: Non. Vous avez eu la chance. J'ai déjà -- je vous ai averti plusieurs fois.

M. RANCOURT: Je sais même pas si mes affidavits sont admis.

MR. DEARDON: Your Honour, I'm going to start my argument now and I'm going to spend very little time on Mr. Rancourt's submission that there

Perell of just last year in the case called *Adi* -- A-D-I- *v. Datta* -- D-A-T-T-A, 2011 decision of Justice Perell, P-E-R-E-L-L and paragraphs 53 to 54 of that decision which give, as is usual with Justice Perell, an encyclopedic summary of the law.

THE COURT: Summary and this is the law. Thank you.

Monsieur Rancourt.

M. RANCOURT: Oui.

Est-ce que j'ai -- je vais avoir 15 minutes?

LA COUR: Oui.

M. RANCOURT: O.k., parce que ça va nous amener à cinq -- passé 5h00.

LA COUR: C'est bien.

M. RANCOURT: Mais, au moins, on n'ira pas jusqu'à 7h00.

LA COUR: C'est ça. Exactement.

M. RANCOURT: O.k.

Et j'aimerais demander que ces 15 minutes, si c'est possible, ne soient pas interrompues.

LA COUR: Monsieur le greffier -- Mr. Registrar, I know you have to leave at 5:00 o'clock?

THE REGISTRAR: Yes. I can wait an additional five minutes.

THE COURT: Pardon?

THE REGISTRAR: Five or ten minutes.

I can wait an extra five or ten minutes.

THE COURT: So if you want to leave, I think we can probably carry on in your absence, with all due respect.

Well, as long as someone brings all the ---

THE REGISTRAR: Well, if Monsieur Rancourt doesn't go after 5/10 minutes, I'm fine with that.

THE COURT: Okay. There we have it, we have the limits.

M. RANCOURT: O.k.

Est-ce que ça serait possible que je puisse -- parce que j'ai -- évidemment, j'ai beaucoup de choses à dire en réponse, si je ne pouvais ne pas être interrompu?

J'ai choisi la priorité des choses que je veux dire et je vais juste vous les dire. Est-ce que c'est ---

LA COUR: O.k.

We should try doing that, I mean, unless there's something ---

MR. DOODY: But, Your Honour, it's not my practice to ---

THE COURT: No.

MR. DOODY: --- interrupt but if -- if Mr. Rancourt ---

M. RANCOURT: Non, mais ce que -- ce que je veux dire ---

LA COUR: Attends. Attends. Attends.

M. RANCOURT: Oui.

MR. DOODY: If Mr. Rancourt does not -- is not making a reply and depriving us of an opportunity to deal with it, then, that ---

THE COURT: Well, it's a conditional agreement.

M. RANCOURT: D'accord.

Et aussi, j'aimerais -- je préférerais ne pas

être dirigé par la Cour pendant les prochains 15 minutes ---

THE COURT: Well, again, we'll -- we'll follow the proper procedures. I think that's all we can say.

M. RANCOURT: D'accord.

Alors, voici. Premièrement, je voudrais dire que je pense que, aujourd'hui, il y a eu des injustices procédurales très importantes surtout, par exemple, par rapport au fait que je ne sais même pas encore si mes affidavits sont acceptés ou pas.

Le troisième affidavit, l'affidavit du 23 mai, c'était sensé être moi qui allais amener une motion pour le faire accepter. Je n'ai pas eu la chance de présenter cette motion, c'est Monsieur Doody qui a présenté une motion et, moi, je suis maintenant en réponse.

Donc, ça je trouve ça des erreurs procédurales très importantes et, en plus, les contraintes de temps, pour moi -- je l'ai dit au début et je le répète -- je continue par respect à la Cour mais je continue en objection.

J'estime que ce processus a été injuste à cause des contraintes pas raisonnables. Il y a plein de choses que je sais que je n'aurai pas la chance de dire, que je n'aurai pas la chance de répondre. Il y a des choses qui me sont venues après l'écriture de mon factum que je n'aurai pas la chance de dire.

Donc, pour moi, c'est une injustice fondamentale qui vient de se produire

aujourd'hui et je tiens à vous dire que, si je dois aller en appel, je vais sûrement soulever ces questions-là.

LA COUR: Je vais répondre à ça parce que vous le faisiez pour le record. Moi, je vais répondre pour le record qu'on a déjà parlé de cette -- votre position puis je ne l'accepte pas et vous avez vos plein droits d'appel.

Les temps limites, selon moi, en cette matière étaient fixés pour une journée par le Juge Beaudoin et encore par moi puis j'ai divisé le temps dans une manière, selon moi, équitable entre vous et les parties adverses et puis, ce, de mes meilleures capacités et puis ça sera à quelqu'un d'autre à juger si c'est acceptable ou non.

C'est les procédures qui sont suivies par la Cour d'Appel pour que, selon la Règle 1.04, que la justice doit être la manière la plus efficace et, en même temps, juste.

Donc, c'est cette balance-là qu'on poursuit pour compléter les matières dans les -- la matière plus efficace et juste et c'est pour ces raisons-là que j'ai -- je ne suis pas d'accord avec votre commentaire.

M. RANCOURT: Merci, monsieur le juge.

LA COUR: Vas-y.

M. RANCOURT: Je comprends ce que vous dites.

Et donc, je passe à mon deuxième point qui est: Je veux venir au 'Supplementary Responding Motion Record' de l'université et je veux aller à l'onglet -- premièrement, je veux aller à

Examination No. 12-0477.2 Court File No. 11-51657

(Ottawa-Carleton)

SUPERIOR COURT OF JUSTICE

Tab 13-16

B E T W E E N:

JOANNE ST. LEWIS

PLAINTIFF

- and -

DENIS RANCOURT

DEFENDANT

****

CROSS-EXAMINATION OF ALLAN ROCK on an Affidavit dated February 21, 2012, pursuant to an appointment made on consent of the parties, to be reported by Gillespie Reporting Services, on April 18, 2012, commencing at the hour of 2:00 in the afternoon.

****

APPEARANCES:

MS. A. SEMENOVA for the Plaintiff

PETER DOODY, ESQ. for University of Ottawa

MR. DENIS RANCOURT for himself

This Cross-Examination was taken in stenotype by Pauline Munro, O.C.R., at Ottawa, Ontario, having been duly sworn for the purpose.

MR. RANCOURT: Thank you.

544 Q. I going to quote from the third e-mail down here. This is from Allan Rock dated April 19th, 2009 to Bruce Feldthusen, and it says:

"Bruce, who do we know that can circulate a response to this fiction? It is important for the members of the community to know that:

1. Far from having had "an impeccable pedagogical career" Rancourt has spent the last several years undermining pedagogy, denying students access to an education, and engaging in a cynical mockery of the whole education process, and.

2. Rancourt is trafficking in fictions to try to save his own skin while recklessly and irresponsibly creating tension in Ottawa's religious communities (as to "fiction" I refer to the example of his lying about me going to Israel last July). How best to get the facts out? Allan".

Do you remember sending that?

A. Oh, yes.

MR. DOODY: Don't answer the question.

MR. RANCOURT:

545 Q. You already answered yes, didn't you?

A. It doesn't make any difference, so.

546 Q. But you did answer yes, didn't you.

A. Yes.

547 Q. Thank you. Given your thus expressed opinions and efforts, Mr. Rock, even after I was dismissed from my tenured full professorship do you think you could be objective about me? Mr. Rock, answer the question.

A. Do I think I could be objective about you?

548 Q. Yes.

A. I cannot deny that I have a view about you, Mr. Rancourt, but I can tell you under oath for the benefit of the court that my view about you had nothing whatever to do with our motive in agreeing to fund this law suit.

That was all about our moral obligation to a member of our academic staff and the right thing for the university to do for someone who had been defamed by an outrageously racist attack.

549 Q. Thank you. Now what is this view that you hold of me, Mr. Rock?

A. I think part of it is expressed in the e-mails you just showed me, Mr. Rancourt.

550 Q. Mr. Rock, you just stated very clearly on the record that you have a view about me. What is your view about me?

A. I just answered that question.

551 Q. What is your view about me, Mr. Rock?

A. I just answered that question.

552 Q. No, you didn't.

MR. DOODY: Don't badger the witness. Don't argue with him.

MR. RANCOURT: He didn't answer the question.

553 Q. So what I just read is a complete summary of your view of me?

A. I think that is indicative of it.

554 Q. Indicative, fine. Indicative is far from complete. I want to know your view of me, Mr. Rock.

A. Mr. Rancourt, the e-mail is indicative, and, as I said, whatever my view of you had nothing to do with the motive of the university to reimburse the legal fees.

555 Q. I have heard that already, Mr. Rock. Mr. Rock, your view of me has become relevant to this examination by virtue of the fact that you brought it up in answering one of my questions.

MR. DOODY: No, I don't accept that proposition. His view of you is not relevant.

MR. RANCOURT:

556 Q. Mr. Rock, what is your view of me?

A. As I said, it is indicative -- the e-mails that you referred to are indicative of my view of you.

But I want to stress that whatever my view --

557 Q. You already stressed that.

A. -- is of you has nothing to do with the motive of the university in funding this law suit.

558 Q. Are you counting how many times you say that, Mr. Rock? I'm trying to get an answer from you.

A. You have my answer. You are asking me the same question.

559 Q. But you are not answering my question. What is your view of me? It is a very simply question.

A. I have told you.

560 Q. You said this was indicative of your view of me --

A. Yes.

561 Q. -- but what is your view of me?

A. That is my answer.

562 Q. So you refuse to answer?

A. No, I told you what my answer is.

563 Q. Yes, you refuse to answer beyond this simple quote.

A. The poor reporter has to take this down. One at a time, please. I have told you that the e-mail to which you refer is indicative of my view of you and that that is irrelevant to the motive of the university in funding this law suit.

564 Q. Yes, you have said it is indicative but that does not express what your view of me is?

MR. DOODY: You have got the answer from the witness.

MR. RANCOURT: So I take that to be a refusal.

MR. DOODY: No, you have got the answer. The transcript will speak for itself. We can all read it.

MR. RANCOURT: An incomplete answer.

565 Q. I suggest, Mr. Rock, that given this history and your view of me that at this point when you made that decision to fund the law suit you were no longer an objective decision-maker?

A. Is that a question?

566 Q. Yes, it is.

A. What is the question? You suggested something. What is your question?

567 Q. I am asking you, isn't that correct.

A. No.

568 Q. Mr. Rock, under your mandate as president have you ever paid to obtain recordings or transcripts of any of my various talks or interviews

MR. DOODY: Don't answer the question, Mr. Rock. *O*

MR. RANCOURT:

569 Q. Mr. Rock?

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Examination No. 12-0408.1 Court File No. 11-51657

ONTARIO SUPERIOR COURT OF JUSTICE

Tab 13-20

B E T W E E N:

JOANNE ST. LEWIS

PLAINTIFF

- and -

DENIS RANCOURT

DEFENDANT

****

CROSS-EXAMINATION OF JOANNE ST. LEWIS ON AFFIDAVIT sworn February 21, 2012, pursuant to an appointment made on consent of the parties to be reported by Catana Reporting Services, on April 23, 2012, commencing at the hour of 10:22 in the forenoon.

****

APPEARANCES:

Richard G. Dearden	for the Plaintiff, Ms St. Lewis
Denis G. Rancourt	Self-Represented Defendant
Peter K. Doody	for the University of Ottawa

This Examination was taken down by sound recording by Catana Reporting Services Ltd., at Ottawa, Ontario.

don't say, 'Oh, my goodness, it shocked a person who's not black. So, therefore, let me walk down the path and really experience it.' When you read racist language, I can't begin to tell you how it's like, it can be like a body blow. And I can tell you that when I finally read your blog post, I was disgusted and I was nauseous. I was actually nauseous. So, no, I did not read it back in February 2011. I just didn't do it then, I didn't. And I'm telling you that I couldn't read it until he told me. I actually said, "Do I have to read it in its entirety?" He said, "It's necessary" because we were at that point where we were looking at the Statement of Claim.

149. Q. So, you say "he", you're pointing to your counsel?

A. To Mr. Dearden.

150. Q. So, you first read the blog post on April 8th, 2011?

A. No, I did not read the blog post on April 8th. On April 8th, I conducted a Google search of my name, "Joanne St. Lewis" in quotes, and I read the first page of the Google search results, and I saw your interesting rhetorical flourish, asking whether I was Allan Rock's house negro, that's all I read. All I needed to see was the title suggesting I was

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somebody's house negro and my head was on fire. That's all I needed, I didn't read anything else. That was disgusting, it was racist. It was a racial slur, I didn't need anything else, and I sure did not want to click on it to even find more of that, god knows what depths it could have gone to. I was not interested to know how far down a pit the attack on me could have gone, I had zero interest. In fact, I was actually quite distressed at the thought that it could have been really quite disgusting and derogatory. I had no idea, no idea whatsoever but I sure -- this wasn't about curiosity, it was like trepidation, not curiosity. These are not fun things, you've made my life into a circus, right? You're playing with my life, with my reputation, and you think it's about a bunch of linguistic games; it's not, it's about racism out and out, racism. And it doesn't matter whether you meant to do that, Mr. Rancourt, that is what you have done.

151. Q. Ms St. Lewis, you did a Google search for your own name?

A. Yes.

152. Q. On April 8th, 2011?

A. Yes, I did.

153. Q. And that is the first time that you saw

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what?

A. I saw the headline of your blog post which asked the question, basically, 'Is Joanne St. Lewis Allan Rock's house negro?'. That's what the actual title of -- that comes up on the search, that's the first time I saw it. I saw the Page 1 results and it was on that Page 1 result, and that's what the result said.

154. Q. And when did you first read the February 11, 2011, "U of O Watch" blog article about you?

A. I told you, I read it later in April when my counsel asked me to read it prior to the preparation of the Statement of Claim. So, it was sometime between my engaging Mr. Dearden on April 15th and our actually producing the Statement of Claim. I had to read it then. It was essential that I read it then, he said, and I did.

155. Q. So, you first read it between April 15th -- --

MR. DEARDEN: Mr. Rancourt, come on.

BY MR. RANCOURT:

156. Q. --- and the production of the Statement of Claim?

MR. DEARDEN: Come on, Mr. Rancourt, this has nothing to do with Champerty. *O*

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Examination No. 12-0408.2 Court File No. 11-51657

ONTARIO SUPERIOR COURT OF JUSTICE

Tab 13-21

B E T W E E N:

JOANNE ST. LEWIS

PLAINTIFF

- and -

DENIS RANCOURT

DEFENDANT

****

CROSS-EXAMINATION OF BRUCE FELDTHUSEN ON AFFIDAVIT sworn February 21, 2012, pursuant to an appointment made on consent of the parties to be reported by Catana Reporting Services, on April 23, 2012, commencing at the hour of 2:20 in the afternoon.

****

APPEARANCES:

Richard G. Dearden for the Plaintiff, Ms St. Lewis

Denis G. Rancourt Self-Represented Defendant

This Examination was taken down by sound recording by Catana Reporting Services Ltd., at Ottawa, Ontario.

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the other party requested?

A. I didn't request any such meeting.

54. Q. Okay. Who was present at that meeting?

A. Professor St. Lewis and myself.

55. Q. Was there anyone else present, either directly, in person or by phone, or any other way?

A. No.

56. Q. How did the meeting proceed?

A. Professor St. Lewis told me about the fact that -- I'm not sure if it was your blog, or in any event, there had been a publication in which you had referred to her as a "house negro", that this publication was popping up all over on Google and smearing her, and she outlined how upset she was about it.

57. Q. Is that the essence of that meeting?

A. Well, I suppose the other part of the meeting was an explanation about how she had found herself the subject of your comment.

58. Q. What was that explanation?

A. That she had prepared a report at the request of the central administration on, I believe it was appeals processes, and that you had taken issue with the report, and somehow felt that justified calling her those words.

59. Q. Was there anything else of substance that was

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discussed at that meeting?

A. Well, we did discuss Professor St. Lewis was determined to do something about it, to put a stop to it. And at my suggestion, I said that we should go and see the President of the university to see what assistance the university would be prepared to offer her. And we discussed possible remedies. I really don't remember the full depth of the discussion, but I do remember we discussed defamation. And I do remember, as I say in my Affidavit, that I had mentioned possibly among others, but I had mentioned Mr. Dearden because I knew him to be an expert in this area.

60. Q. Did you mention other potential counsels as well?

A. I may have done, I simply don't recall.

61. Q. Did you take any notes?

A. No.

62. Q. Did anyone take any notes?

A. I don't think so, no.

63. Q. Why did you suggest Richard Dearden for counsel?

A. Because defamation is a specialized area of the law and I knew his reputation as an excellent defamation lawyer.

64. Q. But knowing the financial situation of

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Examination No. 12-0408.2 Court File No. 11-51657

ONTARIO SUPERIOR COURT OF JUSTICE

Tab 13-24

B E T W E E N:

JOANNE ST. LEWIS

PLAINTIFF

- and -

DENIS RANCOURT

DEFENDANT

****

CROSS-EXAMINATION OF BRUCE FELDTHUSEN ON AFFIDAVIT sworn February 21, 2012, pursuant to an appointment made on consent of the parties to be reported by Catana Reporting Services, on April 23, 2012, commencing at the hour of 2:20 in the afternoon.

****

APPEARANCES:

Richard G. Dearden for the Plaintiff, Ms St. Lewis

Denis G. Rancourt Self-Represented Defendant

This Examination was taken down by sound recording by Catana Reporting Services Ltd., at Ottawa, Ontario.

A. No.
44. Q. When did you first read the blog post?
A. I don't believe I ever have read the blog post.
45. Q. Have you ever seen the blog post just maybe without reading, but just seeing?
A. I don't believe so, no.
46. Q. I'd like to take us back to the meeting with Professor St. Lewis that you have mentioned in your Affidavit. Did she schedule a meeting with your office?
A. I have no idea, I'm sorry, I have no records. She may have done, she may have just come in.
47. Q. And when you say "she may have just come in", do you mean just walk into your office?
A. Well, people frequently come to my door which is an open door, and see if I'm free.
48. Q. So, it's possible it occurred that way?
A. Yes, it is.
49. Q. But you don't remember when that would have been. Not the precise date anyway?
A. Just as I told you before.
MR. DEARDEN: Which was mid-April.
BY MR. RANCOURT:
50. Q. Did you know that ---
MR. DEARDEN: Did you get that Mr. Rancourt?

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88. Q. Okay. So, did you speak to the Chief of Staff about the meeting, prior to the meeting?

A. I told you, I have no recollection of having done so.

89. Q. Would it have been normal for you to express what the meeting was about to the President's office before the meeting?

MR. DEARDEN: What's "normal"?

BY MR. RANCOURT:

90. Q. Would it have been current practice in your practice as Dean?

A. Yes, I think so.

91. Q. So, you probably did then?

A. I have no recollection.

92. Q. Okay. How did the meeting with Allan Rock proceed?

A. Professor St. Lewis controlled the narrative, she explained what you had written about her and where it was turning up, the impact she felt it was having on her person and her career. So that was, she explained, the link between your writing and the work she had done for President Rock. And she expressed a desire to take legal means to address this.

93. Q. So, if I understand correctly, Professor St. Lewis by this time had decided firmly that she was

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going to litigate this matter?

A. I think that would be an overstatement, but she was certainly feeling out her options.

94. Q. Did Professor St. Lewis make any requests at the meeting?

A. Well, I made a request which -- I requested that the university support her in her efforts to put a stop to this defamation.

95. Q. When you say "support her", could you be more specific?

A. Well, support her financially, absolutely.

96. Q. How did Allan Rock respond to your request?

A. Well, I think Allan Rock was as upset -- well, maybe not as upset as Professor St. Lewis, but as upset as I was about this turn of affairs. And he was definitely interested in supporting Professor St. Lewis. No decisions were actually made in my presence, but I had a feeling that they would be forthcoming.

97. Q. Okay. Now, but you were present for the entire meeting?

A. I was.

98. Q. And do you remember at what time the meeting was scheduled for?

A. What time of day?

99. Q. Yes.

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A. Not in my presence. I believe the only decision was to consult Mr. Dearden.

193. Q. So, there was a decision to consult Mr. Dearden about his availability. Is that right?

MR. DEARDEN: He didn't say that.

BY MR. RANCOURT:

194. Q. No, I'm asking, it's a question.

A. You remember I said at the beginning of this that when you consult a lawyer, the lawyer could say, 'You don't have a case', 'You do have a case', 'I will take that', 'I won't'. So, I have no idea how that consultation would have gone, and I still don't.

MR. DEARDEN: You're only required, Dean, to answer questions that you've dealt with in your Affidavit and that you have knowledge of.

THE WITNESS: Okay. Well, as I said, I don't know.

MR. DEARDEN: Don't guess.

THE WITNESS: I don't know.

BY MR. RANCOURT:

195. Q. No, but you mentioned just now that there was mention at the meeting that Mr. Dearden would be consulted.

A. Correct.

196. Q. What did you mean by that?

A. What did I mean by what, I'm sorry, I don't --

197. Q. You said "correct" as your answer. Is that correct?

A. Correct, that Mr. Dearden would be consulted.

198. Q. Thank you. And who would consult Mr. Dearden?

A. Well, I don't know. I guess I'll just leave it at that. I think it's fairly obvious it would be a client that would consult Mr. Dearden.

199. Q. But you don't know?

A. Correct.

200. Q. Did Mr. Rock approve of the choice of Mr. Dearden?

A. I believe he was favourably disposed to Mr. Dearden.

201. Q. And you yourself also recommended it?

A. I certainly did.

202. Q. Was there any kind of confirmation in writing about this agreement to fund a litigation?

A. As I told you, there were no notes.

203. Q. Was it known at the time of the meeting with Allan Rock that Mr. Dearden would be able to take this case on?

A. Not to my knowledge.

MR. DEARDEN: It's not relevant. *O*

MR. RANCOURT: Those are all my questions, thank you.

MR. DEARDEN: I have several re-examination questions.

MR. RANCOURT: How long will it take, Mr. Dearden?

MR. DEARDEN: Two minutes, I hope.

RE-EXAMINATION BY MR. DEARDEN:

220. Q. At one point in your Cross-Examination, Dean, you said a client would consult me, Rick Dearden. Who was the client you were referring to when you gave that answer to Mr. Rancourt?

A. Oh, Professor St. Lewis.

221. Q. And shortly after that answer, you gave an answer to Mr. Rancourt that Mr. Rock was favourably disposed to me as counsel. Whose decision was it to select counsel to represent Professor St. Lewis?

A. Professor St. Lewis.

222. Q. And my last question. You had given an answer to Mr. Rancourt that you had certainly requested to President Rock that the University of Ottawa support Professor St. Lewis in paying for legal counsel to sue Professor Rancourt. What is your recollection of the request that Professor St. Lewis made of President Rock

Examination No. 12-0477.2 Court File No. 11-51657

(Ottawa-Carleton)

SUPERIOR COURT OF JUSTICE

Tab 13-27

B E T W E E N:

JOANNE ST. LEWIS

PLAINTIFF

- and -

DENIS RANCOURT

DEFENDANT

****

CROSS-EXAMINATION OF ALLAN ROCK on an Affidavit dated February 21, 2012, pursuant to an appointment made on consent of the parties, to be reported by Gillespie Reporting Services, on April 18, 2012, commencing at the hour of 2:00 in the afternoon.

****

APPEARANCES:

MS. A. SEMENOVA for the Plaintiff

PETER DOODY, ESQ. for University of Ottawa

MR. DENIS RANCOURT for himself

This Cross-Examination was taken in stenotype by Pauline Munro, O.C.R., at Ottawa, Ontario, having been duly sworn for the purpose.

24 Q. So no memory of anything he might have said to anyone?
A. Not particularly, no.
25 Q. So the meeting would have ended around lunch time on that day, April 15th?
A. It lasted about an hour.
26 Q. So it ended about lunch time?
A. It ended about 12:00.
27 Q. Would you have gone to lunch with the participants in the meeting after the meeting?
A. No.
28 Q. Everyone went their own way?
A. That is my memory.
29 Q. This is an exhibit about the blog post -- I guess you could call it the blog post in question that gave rise to the litigation, and everyone is very familiar with this blog post, and I only have two copies of it. I will you one and this will be Exhibit 1. Do you recognize this blog post?
A. No.
30 Q. Have you never seen this blog post?
A. I don't believe I have.
31 Q. So you have never seen this blog post in any form? I mean this is a particular print out of what is on the web but is there any way you would have seen this blog

post or its contents?

A. I have certainly seen its contents. I have seen it referred to and quoted from.

32 Q. Where?

A. In the newspaper, and I think it is referred to and quoted in the Statement of Claim as well.

33 Q. Yes, rather extensively. So you would have read the contents of this blog post in the Statement of Claim?

A. And in the newspaper.

34 Q. The newspaper would only have parts of it I imagine?

A. I can't speak to that. I have never seen it before.

35 Q. When did you read the Statement of Claim and its contents? When did you first read it?

A. Well, sometime after it was issued but I don't know exact exactly when. When was it issued?

MR. DOODY: It was issued I think on the 23rd of June -- just let me check.

MR. RANCOURT:

36 Q. Let's say it was issued in June.

MR. DOODY: I will give you the date. June 23, 2011.

THE WITNESS: Sometime after that.

the defamation the dean of the faculty of law, common law section, was very supportive. I believe that Stephane's involvement was minimal, but he may also have spoken, and if he did I just can't be sure what it was he said, because I have already told you I wasn't even sure he was there.

181 Q. But now you remember he was there?

A. Yes.

182 Q. When I asked you about had you consulted anyone you said there was a discussion between the three of you, so I am trying to know what that discussion was. I mean you are consulting about this decision?

A. Yes.

183 Q. That was my question.

A. We are discussing the question on the table and what I have told you is that the dean of the faculty of law, common law section, was very supportive of the proposition that the university should stand with our professor and agreed to reimburse her for legal expenses.

184 Q. Did the dean, Mr. Feldthusen, have an opinion about how much money this would involve?

A. If he did I don't remember him expressing it.

185 Q. You said you made the decision to fund. You said yes. Was there no cap established in terms of funding?

A. No.

186 Q. None?

A. No.

187 Q. And do you stand by that today?

A. I am answering your question. You asked me if there was a cap and I told you no.

188 Q. And my next question is do you stand by that today?

MR. DOODY: That is not relevant to this motion.

MR. RANCOURT:

189 Q. Do you stand by the decision to fund this law suit without a cap?

MR. DOODY: Don't answer the question. It is not relevant to the motion. *O*

MR. RANCOURT:

190 Q. Are you refusing to answer that question? Mr. Rock, I am asking you?

A. I am taking my counsel's advice.

191 Q. Yes, but you have to decide. Are you refusing to answer the questions?

A. I take my counsel's advice.

192 Q. So you are refusing then. Just say yes.

A. I will answer the questions as I see fit, Mr. Rancourt.

193 Q. Okay. What is the annual operating budget of

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Examination No. 12-0408.1 Court File No. 11-51657

ONTARIO SUPERIOR COURT OF JUSTICE

Tab 13-29

B E T W E E N:

JOANNE ST. LEWIS

PLAINTIFF

- and -

DENIS RANCOURT

DEFENDANT

****

CROSS-EXAMINATION OF JOANNE ST. LEWIS ON AFFIDAVIT sworn February 21, 2012, pursuant to an appointment made on consent of the parties to be reported by Catana Reporting Services, on April 23, 2012, commencing at the hour of 10:22 in the forenoon.

****

APPEARANCES:

Richard G. Dearden	for the Plaintiff, Ms St. Lewis
Denis G. Rancourt	Self-Represented Defendant
Peter K. Doody	for the University of Ottawa

This Examination was taken down by sound recording by Catana Reporting Services Ltd., at Ottawa, Ontario.

CATANA REPORTING SERVICES, 800-170 Laurier Ave. W., Ottawa, ON K1P 5V5
Tel: (613) 231-4664 1-800-893-6272 Fax: (613) 231-4605

what?

A. I saw the headline of your blog post which asked the question, basically, 'Is Joanne St. Lewis Allan Rock's house negro?'. That's what the actual title of -- that comes up on the search, that's the first time I saw it. I saw the Page 1 results and it was on that Page 1 result, and that's what the result said.

154. Q. And when did you first read the February 11, 2011, "U of O Watch" blog article about you?

A. I told you, I read it later in April when my counsel asked me to read it prior to the preparation of the Statement of Claim. So, it was sometime between my engaging Mr. Dearden on April 15th and our actually producing the Statement of Claim. I had to read it then. It was essential that I read it then, he said, and I did.

155. Q. So, you first read it between April 15th -- --

MR. DEARDEN: Mr. Rancourt, come on.

BY MR. RANCOURT:

156. Q. --- and the production of the Statement of Claim?

MR. DEARDEN: Come on, Mr. Rancourt, this has nothing to do with Champerty. *O*

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Mr. Rancourt, I don't even need to turn to my counsel. *R*

197. Q. It is relevant. Do you refuse to answer?

A. No. I absolutely totally refuse to answer. We -- you know --- *R*

MR. DEARDEN: It's okay.

THE WITNESS: Sorry.

BY MR. RANCOURT:

198. Q. On April 15th, by the time you met Allan Rock, had you read the February 11th, 2011 blog post about you?

A. No, I hadn't.

MR. DEARDEN: Let's just get the parameters right, though. So, this is April 15th; the meeting with Allan Rock and others is over. That's the time frame you're talking about is after that meeting is over but ---

BY MR. RANCOURT:

199. Q. During the meeting. In that ---

A. In the meeting. That's what you said.

200. Q. Oh, okay, let me clarify. Had you read it before the meeting began with Allan Rock?

A. Mr. Rancourt, I've answered this several times. I did not read the blog post. In other words, what I mean by "read the blog post" is go to the Page 1 of the Google search results in my name in quotes,

and click on the title to see the blog post. I did not do that until later in April when Mr. Dearden told me, "Joanne, you must do it." It was a conversation like that. The fact that I even have to talk to you about what I said between myself and my lawyer is actually beyond for me, but I'm telling you, I read it at the direction of my counsel. I did not read it before, I did not read it immediately before the meeting. I did not read it during the meeting, nobody had it in the meeting. I didn't see it because I am telling you, when I read the content of your blog post, it's not just a title. I found the title scary enough, but when I saw how you appropriated Black History Month, when I saw how you actually went about saying as a person, 'We created Black History Month', we, as Black people. It came out of Negro History Week, okay? And that was to celebrate and put us forward in a positive way. For you to have the temerity and audacity to suggest it's used for "outing" Black people, to name me as an iconic example, to upload the Malcolm "X" video, trust me that I don't know what kind of state I would have been had I seen all of that on April 15th. I did not see it, okay? The title was bad enough. And to me, it felt to me that each time I had to do something

N° de dossier: 11-51657

COUR SUPÉRIEURE DE JUSTICE

(DIVISION CIVILE)

Tab 13-50

E N T R E :

JOANNE ST. LEWIS

(Demanderesse)

E T

DENIS RANCOURT

(Défendeur)

****

M O T I O N

(INTENTÉE PAR LE DÉFENDEUR)

ENTENDUE DEVANT L'HONORABLE JUGE ROBERT N. BEAUDOIN
Mercredi, le 20 juin 2012 à Ottawa

****

(Tome I)

Comparutions:

R. Dearden	Avocat pour la défenderesse
D. Rancourt	Pour lui-même
P. Doody	Avocat pour l'Université d'Ottawa

J'aimerais signaler un autre document parce que ce document relie de…

MR. DEARDEN: Just so I'm clear on....

M. RANCOURT: ...– de des….

MR. DEARDEN: Mr. Rancourt, just so I'm clear on the record, I'm saying you can't do that. You can't do that.

THE COURT: No.

MR. DEARDEN: 'Cause you haven't got leave yet to have this in this motion.

LE TRIBUNAL: Pas la permission de la Cour de faire référence des documents additionnels.

M. RANCOURT: Dans la motion principale, M. le Juge, mais nous sommes dans….

LE TRIBUNAL: Non, aujourd'hui – mais vous ne pouvez pas éviter ça en les introduisant ici aujourd'hui.

M. RANCOURT: Mais ils ne sont pas encore admissible dans la motion principale. Ils sont ici pour….

LE TRIBUNAL: Alors pourquoi je devrais les traiter maintenant?

M. RANCOURT: Parce que…

LE TRIBUNAL: Pourquoi…

M. RANCOURT: …ils sont pertinents….

LE TRIBUNAL: …ils seraient admissibles maintenant?

M. RANCOURT: Parce qu'ils sont pertinents à la question…

LE TRIBUNAL: On n'a pas…

M. RANCOURT: …des refus.

LE TRIBUNAL: …décidé l'admissibilité de ces documents-là.

M. RANCOURT: Dans la motion principale,…
LE TRIBUNAL: Oui.
M. RANCOURT: …on n'a pas décidé.
LE TRIBUNAL: Alors pourquoi ils seraient admissibles maintenant?
M. RANCOURT: Parce qu'ils sont pertinents à la motion pour les refus, M. le Juge.
LE TRIBUNAL: Non. Élargir toujours votre Avis de motion avec les documents vous n'avez pas eu la permission de déposer.
M. RANCOURT: Je…. Je…. En les introduisant ici, je ne les introduis pas dans la motion principale. Je….
LE TRIBUNAL: Mais vous voulez mettre en preuve. Ça fait la même chose.
M. RANCOURT: Ils peuvent être exclus si la décision….
LE TRIBUNAL: Mais non. Je peux pas me fier sur un document sur lequel on n'a pas encore tranché la question d'admissibilité.
M. RANCOURT: Mmm. Je pense que le document – je crois que le document "W" n'est pas un de ces documents-là, mais plutôt un autre. Je sais pas – je ne sais pas s'il est dans cette catégorie-là ou pas, mais je trouvais qu'il est important pour les refus parce qu'il relie M. Bruce Feldthusen, qui est un des…
MR. DEARDEN: Yes, it is.
M. RANCOURT: …un des déposants.
MR. DEARDEN: It's subject to the leave application…
M. RANCOURT: Oui?

Tab 14-5a

This is Exhibit "H"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.

TERMS OF REFERENCE FOR AN ENDOWED FUND

NAME OF ENDOWMENT FUND (OTSS[1])

IAIN BEAUDOIN MEMORIAL AWARD

INTRODUCTION

This award was created in honour of Iain Beaudoin ('06). As a proud graduate of the French Common Law Program, Iain Beaudoin was keenly aware of the financial constraints felt by many of his classmates. The family of Mr. Beaudoin has generously created this award in order to assist law students with financial need.

The donors thank the Government of Ontario who helped create this fund through their generous matching contributions.

PURPOSE OF FUND

To provide financial support to second-year students in the French-language JD program at the Faculty of Law, Common Law Section.

AWARD DETAILS

Eligibility Criteria:

The applicant must:

1. be registered as a full-time second-year student in the French-language JD program at the Faculty of Law, Common Law Section;
2. be an Ontario resident, as per OSAP[2] rules; and
3. demonstrate financial need, as determined by the Financial Aid and Awards Service of the University of Ottawa.

Value of the Award:	$1,000; variable, according to the income available in the fund and at the discretion of the selection committee.
Number of Awards:	One
Frequency of the Award:	Annual
Level of the Award:	JD (French Common Law Program), second year
Application Contact:	Director, Financial Aid and Awards Service
Application Deadline:	February 28 or September 30, as determined each year by the Financial Aid and Awards Service.

APPLICATION PROCEDURE

Application must be made to the Director of Financial Aid and Awards Service and should include:

1. a completed OTSS application form, including the "Financial Questionnaire", available online at www.infoweb.uottawa.ca; and
2. a copy of the applicant's academic transcript.

[1] OTSS: Ontario Trust Student Support
[2] OSAP: Ontario Student Assistance Program

SELECTION COMMITTEE

The Selection Committee will comprise:

1. the Director of Financial Aid and Awards Service, or his/her delegate, as Chair of the Committee;
2. the Dean of the Common Law Section, or his/her delegate; and
3. an additional faculty member as identified by the Dean.

AWARDING PROCEDURE

The Financial Aid and Awards Service will:

1. verify that the student is in good standing;
2. confirm the granting of this award in writing to the recipient and to the Common Law Section; and
3. arrange to credit the student's account at the University.

RECOGNITION

The Financial Aid and Awards Service agrees on an annual basis to:

1. send a letter to the donor contact advising the name of the recipient; and
2. recommend that the recipient acknowledges the award in a letter to the donor contact, the delivery of which will be coordinated by the Development Office.

FINANCIAL ARRANGEMENTS

1. All donations should be sent to the Development Office for credit to the appropriate accounts (endowment or expendable). All cheques should be made payable to the University of Ottawa.
2. Receipts for income tax purposes accompanied by an acknowledgement letter will be sent to all donors by the Development Office.
3. The University of Ottawa may invest the capital as it sees fit.
4. The portion of the income allocated for the purposes of the fund will be credited to an expendable account of the endowed fund at the Financial Aid and Awards Service, in accordance with Policy #111: *Investment of non-expendable endowment funds*.
5. The financial year of the fund is from May 1 to April 30.
6. At the end of each University fiscal year, Financial Services will notify the Financial Aid and Awards Service, who will in turn notify the Common Law Section of the amount available for the purposes of the fund.

GENERAL

If future circumstances make it impossible or impractical for the University of Ottawa to continue using the fund for the stated purposes, the University will endeavor to contact the donors to explore other purposes for the fund. If the University is unable to locate the donors or if the donors are deceased, the University may use the fund in the way it deems most beneficial for the institution, but must adhere as closely as possible to the spirit of the fund and to the donors' original intent.

The University of Ottawa must maintain OTSS regulations concerning financial aid and Ontario residency requirement.

ADMINISTRATION CONTACTS

Donor contact:
The Honourable Mr. Justice Robert Beaudoin
853 Wingate Prom.
Ottawa, Ontario K1G 1S4
Tel (work): 613-239-1451 Fax: 613-239-1507
E-mail: Robert.Beaudoin@scj-csj.ca

Common Law Section:
Dean
111 - 57 Louis Pasteur St.
Tel: 613-562-5927 Fax: 613-562-5124

Development Office:
Director, Scholarships and Stewardship
202 - 190 Laurier Ave. E.
Tel: 613-562-5800, ext. 3877 Fax: 613-562-5127

Terms of Reference Officer
207 - 190 Laurier Ave. E.
Tel: 613-562-5800, ext. 3694 Fax: 613-562-5127

Financial Aid and Awards Service:
Director
123 - 85 University St.
Tel: 613-562-5932 Fax: 613-562-5155

Financial Services:
Assistant Director, Research, Trust and Endowment
029 - 550 Cumberland St.
Tel: 613-562-5800, ext. 1509 Fax: 613-562-5988

University of Ottawa
Ottawa, Ontario K1N 6N5

APPROVED ON NOVEMBER 10, 2010 BY THE ADMINISTRATIVE COMMITTEE OF THE BOARD OF GOVERNORS (T-51155).

Tab 14-5b

This is Exhibit "A"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.

Working to keep a son’s memory alive

BY SHELLEY PAGE, THE OTTAWA CITIZEN APRIL 24, 2012

Anyone who says you eventually “move on from” or “get over” the loss of a child is wrong, says Robert Beaudoin. Instead of moving forward, he says a parent can get caught between two intense feelings; deep grief, and a need to celebrate your child’s brief time on Earth.

Photograph by: Jean Levac, CanWest News Service, The Ottawa Citizen

OTTAWA — When Ontario Superior Court Justice Robert Beaudoin leaves next month for Zambia with 20 other lawyers and judges it will be as much a journey to keep his son’s memory alive as a mission to build a school.

It has been three-and-a-half years since Iain, a lawyer, died aged 28, and Beaudoin is still picking his way through the rocky landscape of grief.

Anyone who says you eventually “move on from” or “get over” the loss of a child is wrong, says Beaudoin, 63.

Instead of moving forward, the judge says a parent can get caught between two intense feelings; deep grief, and a need to celebrate your child’s brief time on Earth.

The push and pull of these two contradictory instincts can be overwhelming, but one way to deal with it is by focusing on the gift that was the child’s life.

“Any bereaved parent will tell you that there are two things that help you cope,” says Beaudoin. “One

impulse you have, when you lose a child, is to make sure their name isn't lost and people remember them. The other impulse is to do the kinds of things you think your child would have wanted to do."

In a quiet voice, Beaudoin describes all he and his wife, Claudia, have done to keep Iain's name alive, and participate in activities they imagine he would have enjoyed or found meaning in. This includes participating in a fundraising play next week at the Great Canadian Theatre Company and organizing the impending trip to Zambia.

Iain — a husband to Laleah and father to Emma, a then-21-month-old — died in November, 2008, of myocarditis believed to have been caused by a rare reaction to an anti-inflammatory drug. He was taking Asacol to treat ulcerative colitis when he began complaining of chest pains. He died at home the morning he had an appointment scheduled to discuss the results of an echocardiogram.

"Losing a child, it leaves a hole in your life," Beaudoin explains.

After a few rough months, the first step his family took was to set up a scholarship in Iain's name at the University of Ottawa Law School. Beaudoin was also delighted that the law firm Borden Ladner Gervais, where his son was a second-year patent lawyer, named a meeting room after him.

"So everyday, someone says, 'You can meet in the Iain Beaudoin room.'"

Next week (April 24 — 28), the County of Carleton Law Association and the GCTC are putting on the comedy His Girl Friday. The 2012 charity partner is the Zambia School Project, created in memory of Iain.

Beaudoin also has a role in the production, set in 1930s Chicago. He will play the crooked mayor, who along with a crooked sheriff, is "bound and determined to see somebody hung in record time to improve their chances of re-election."

This is not his first role. Beaudoin has acted in nine of the so-called Lawyer Play's 13 productions.

Each year, through Lawyer Play, Ottawa's legal community raises funds to support the GCTC as well as a charity of choice. So far, they have raised around one million dollars for GCTC and partner charities.

This year more than $50,000 has been raised in Iain's memory toward a school in Munenga, Zambia in partnership with the Emmanuel United Church of Ottawa.

Beaudoin, his wife, and a group of lawyers went to El Salvador through Emmanuel United Church in 2006 to build houses for the working poor.

This project will serve 138 children who don't currently attend school.

The lawyers will travel to support the project, but Beaudoin points out they won't actually construct the building because they don't want to take jobs away in a country that suffers from wide-scale unemployment.

"He (Iain) thought it was far more important to go down there and give them skills. We thought building

a school would be in keeping with Iain’s philosophy. He felt strongly about libraries and learning.”

The legal team will meet with Zambia’s legal community and attend a tribal court.

Beaudoin is looking forward to the journey with a heavy but hopeful heart. He feels he is embarking on an adventure his son would very much appreciate.

“For him to know there will be 138 kids who will now go to school, who otherwise wouldn’t have would be everything he would be most happy about.”

Tab 14-11

This is Exhibit "R" to the Affidavit of Denis Rancourt, sworn before me this 16 day of January, 2012.

MR

Gmail by Google

Denis Rancourt <denis.rancourt@gmail.com>

your evaluation report of the SAC Annual Report 2008

dgr@uottawa.ca <dgr@uottawa.ca> **Sun, Dec 7, 2008 at 5:44 PM**
To: joanne.stlewis@uottawa.ca
Cc: dgr@uottawa.ca

Dear Colleague,

I posted my assessment of your evaluation report here:

http://uofowatch.blogspot.com/2008/12/rock-administration-prefers-to-confuse.html

Please feel free to post a reply in comment.

Yours truly,
dgr

This is Exhibit "Q" to the Affidavit of Denis Rancourt, sworn before me this 16 day of January, 2012.

MR

U OF O WATCH

THIS SITE IS DEVOTED TO TRANSPARENCY AT THE UNIVERSITY OF OTTAWA, OTTAWA, CANADA. UOFOWATCH EXPOSES INSTITUTIONAL BEHAVIOUR THAT IS NOT CONSISTENT WITH THE PUBLIC GOOD.

U OF O WATCH MISSION, IN THE WORDS OF FOUCAULT...

"One knows ... that the university and in a general way, all teaching systems, which appear simply to disseminate knowledge, are made to maintain a certain social class in power; and to exclude the instruments of power of another social class. ... It seems to me that the real political task in a society such as ours is to criticise the workings of institutions, which appear to be both neutral and independent; to criticise and attack them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight against them." **-- Foucault, debating Chomsky, 1971.**

U OF O WATCH MISSION, IN THE WORDS OF SOCRATES...

"An education obtained with money is worse than no education at all." **-- Socrates**

VIDEO OF PRESIDENT ALLAN ROCK AT WORK

SATURDAY, DECEMBER 6, 2008

Rock Administration Prefers to Confuse "Independent" with "Internal" Rather Than Address Systemic Racism

The Student Appeal Centre (SAC) of the Student Federation University of Ottawa (SFUO) released its second annual report, entitled "*Mistreatment of Students, Unfair Practices and Systemic Racism at the University of Ottawa*", in November 2008.

.

The SAC report is a moving testimony based on the Centre's work representing students, with supporting statistics and illustrative case studies. See Report HERE.

.

The SAC 2008 Report sounds the alarm at the U of O by suggesting that the institutional treatment of academic fraud cases appears to suffer from systemic racism. More than two thirds of the 48 students who consulted the centre on academic fraud charges in the report period were visible minorities (Arab, Asian, and black men and

TABARET HALL - U OF O

The central admin building in the fall. Photo credit: University of Ottawa

U OF O PRESIDENT ALLAN ROCK

click image for updated posted list of ethical breaches of Allan Rock

U OF O WATCH - CREATING TRANSPARANCY

women).

.

The SAC 2008 Report also exposes bias in practice and attitudes among members of the institution's relevant decisional bodies, such as with the Senate Appeals Committee which at the time of the SAC 2007 Report still had the practice of refusing that its members be identified to the defendant students and their representatives.

.

To this day, the University of Ottawa does not post Senate committee memberships on its web site – this at "Canada's university" which claims in its Vision 2010 strategic plan that "Collegiality, transparency and accountability are the principles that guide our university governance."

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The SAC 2008 Report attracted much radio, TV, and print media attention. This normally should have catalyzed a positive response, with the University launching a self-examination exercise in view of repairing the situation.

.

Instead, the Rock administration launched a campaign of deep denial.

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At the November 17th Board of Governors meeting Allan Rock stated "*I know enough about the work that's been done to date to tell you that we're going to disagree very strongly that there's any evidence to support the allegations that have been made*," in reference to the University's evaluation of the SAC report.

.

On November 24th VP-Academic and Provost Robert Major referred to the University's evaluation as a soon to be released "*public [...] evaluation[,] by an independent assessor, of the report [of the SAC]*".

.

The University's "*Evaluation Report of Student Appeal Centre 2008 Annual Report*" by service intellectual Assistant Professor Joanne St. Lewis, dated November 15th, was released on November 25th (see University press release HERE). The professor herself calls it "an independent evaluation" in the first line of her report.

.

Students who would attempt to pass an internal report as an independent report would probably be accused of academic fraud but such intellectual dishonesty appears to be acceptable to the institution for a report denouncing a student association "allegation" of racism in treating academic fraud cases.

.

Rather than being an independent report, and far from being of professional caliber, the St. Lewis evaluation is *prima facie* intended to diffuse a media and public relations image management liability for

DENIS RANCOURT

Email Denis Rancourt.

VIEW MY COMPLETE PROFILE

DISCLAIMER:

Unless otherwise stated, the views expressed in posts and comments are those of the posting authors. Except if otherwise stated, the views and positions of UofOWatch are those of Denis G. Rancourt, former professor of physics at the University of Ottawa.
Obviously, links and references to cited works do not imply agreement with or endorsement of the views expressed or information in the linked postings or cited works.

VISITS TO DATE

LINKS

A Student's Eye View (U of O Senate madness)
Academic Freedom - Rancourt case
Activist Teacher
CHUO 89.1 FM The Train campus radio show
Corporate UofO mission statement
Corporate UOttawa site
Media reports about the Rancourt academic freedom case

BLOG ARCHIVE

► 2007 (18)
▼ 2008 (16)
► January (1)
► February (1)

the University. The University appears to be far more concerned with casting doubt on the conclusions of the SAC report than on an independent examination of the issue or on implementing any preventative measures.

.

The St. Lewis report has an unprofessional tone throughout. It states "*very unprofessional*" rather than "unprofessional"; "*totally unsubstantiated*" rather than "unsubstantiated"; "*complete failure to*" rather than "failure to"; "*does not provide any assistance*" rather than "does not provide enough assistance"; "*clearly intended*" instead of "intended"; etc. A language that is not characteristic of objectivity...

.

St. Lewis stressed that the SAC data on student complaints relates to only "*1% of the total university population.*" Many published medical clinical trials and studies are based on similar-size and smaller samples. You use what you have. If only 0.1% of students were murdered every year on campus would we wait for a statistically significant sample to perform a detailed correlations analysis of likely causes before sounding the alarm and seeking concrete remedies? Would the University put out a report criticizing the legitimacy of the data and the fact that error analysis was not performed? (The nature of the St. Lewis report suggests it might...)

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More important are some gross elements of the St. Lewis report.

.

RELIEVING EXECUTIVE RESPONSIBILITY

.

In arguing that University executives cannot and should not be asked to intervene in student appeal cases, St. Lewis confuses a system that is ideal when the individuals running it are ideal with the breakdown that occurs when the individuals act with racial prejudice and class bias. St. Lewis takes the position that the approved process cannot be sabotaged by discrimination, racism, and bias, and removes the legal responsibility of University executives to intervene in such circumstances of breakdown. Her position is the absurd one where the system works by definition such that the responsible executives cannot legitimately intervene. It appears that the responsible executives in question are happy to agree with St. Lewis.

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EVIDENCE FOR SYSTEMIC RACISM

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Another gross element of the St. Lewis report actually substantiates the SAC conclusion of systemic racism. In her report St. Lewis writes: "*The International Office currently provides international students with information regarding the academic expectations [...] including our (sic) policy on plagiarism [...] They are informed of the*

► March (3)
► April (1)
► July (1)
► August (1)
► September (1)
► October (4)
► November (1)
▼ December (2)
Rock Administration Prefers to Confuse "Independen...
Committee Members Committed to Academic Values

► 2009 (20)
► 2010 (82)
► 2011 (120)
► 2012 (2)

LABELS (KEYWORDS)

52 profs (3)
academic fraud (2)
academic freedom (25)
ACFAS (1)
activism course (19)
Agnes Whitfield (1)
Alain Roussy (2)
Alan Rock (83)
Allain St-Amant (5)
Amalia Savva (1)
Amir Attaran (1)
Andre Champagne (3)
Andre Dumulon (1)
Andre Lalonde (28)
Andre Longtin (1)
Ann Cavoukian (1)
Ann Coulter (13)
Anthony Meehan (1)
apology (2)
APTPUO (5)

consequences of plagiarism [...] It is a well known adage that 'ignorance of the law is no excuse'."

.

Such disregard for cultural differences regarding copyright etiquette and academic "norms" is in itself systemic racism, at an institution that prides itself in celebrating Canada's multi-culturalism. St. Lewis' position of the supremacy of western academic practice, while being insensitive to cultural diversity among international students, is a window into a root cause of the problem that the SAC has identified.

.

A rigid and zealous "academic fraud" program, incapable of critical self-examination is also paternalistic and at odds with some of the richest intellectual property movements in our globalized world: Copyright-alternative movements and the copyleft concept of participatory creativity.

.

MAIN RECOMMENDATION IS TO ACCESS SAC DATA...

.

Finally, to name only one of the many other major problems contained in the St. Lewis report, let us address its "*principal recommendation that an independent assessment to evaluate the Academic Fraud files identified by the Student Appeal Centre be conducted [...] to ensure that there is indeed no systemic racism in the Academic Fraud process.*"

.

And restated as St. Lewis' Recommendation 1: "*That SAC cooperate with the University in allowing it to undertake an independent analysis of the Academic Fraud data [...]*"

.

We thinks it might be good for St. Lewis to define "independent" here... Let's see... St. Lewis' main recommendation is for the University to access and evaluate the SAC data that students have provided the SAC. Wow! And this would not "*have a chilling effect on students' willingness to pursue their legitimate claims*" as St. Lewis suggests is the effect of the SAC Report?

.

So after all this, according to St. Lewis, the best thing to do now, since it's obvious that there cannot possibly be systemic racism at "our" U of O, is to get that SAC data and shred it so it can't hurt us any more. Brilliant.

.

I predict that St. Lewis is in line for a promotion to Associate Professor soon.

.

[Photo credit: University of Ottawa; Joanne St. Lewis]

POSTED BY DENIS RANCOURT AT 8:00 PM
LABELS: JOANNE ST. LEWIS, MALFEASANCE, MIREILLE GERVAIS, RACISM, ROBERT MAJOR, SAC, SFUO

10 COMMENTS:

Liam said...

Hello Dr. Rancourt,

I'm not sure I understand the "EVIDENCE FOR SYSTEMIC RACISM" paragraphs. Can you please explain or direct to some information about cultural differences in copyright etiquette?

Thank you,
Liam.

DECEMBER 6, 2008 10:53 PM

Philippe said...

I am in no way competent to comment on the issues relative to racism.

But I wonder if the author of the report considered in any way the power relationship between a professor and a student in her legal analysis of the appeal process. In particular, I found that some of the problems of the students mentioned in the case studies were dismissed too easily, because the students were not "credible". However on the credibility scale there is an inherent bias towards professors, especially when the people making the judgment are other professors.

Also, when the author claims that the SAC, or the SFUO, "doesn't understand the process", it reminds me of too many times where the University of Ottawa used the same line to repel criticisms of the process. I think it's a very condescending way to address the issue. The author should have at least considered the alternate idea that the SFUO and the SAC do understand the process, but they have the impression that it fails, hence the need to appeal to the President or VP Academic.

Seeing my own case that isn't resolved almost 600 days after my initial Policy 110 complaint, it's hard for me to not agree with the SAC that part of the process is broken.

Tab 14-14

This is Exhibit "G"

to the Affidavit of Denis Rancourt,

sworn before me this

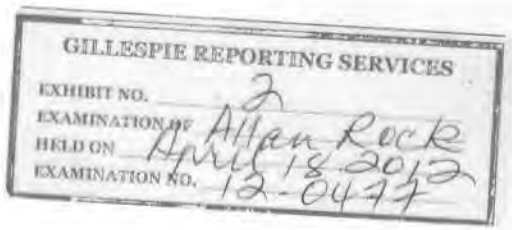
23 day of April, 2012.

Maura Ann

183

Vice-recteur à la gouvernance - Vice-President, Governance

From: Allan Rock
Sent: Sunday April 19, 2009 11:15 AM
To: Bruce Feldthusen
Subject: Check this out



Zionist Conspiracy - http://zioncon.blogspot.com/

From: Bruce Feldthusen
Sent: Sunday April 19, 2009 10:41 AM
To: Allan Rock
Subject: RE: Please sign the petition/Prof. Rancourt

I am going to talk to Wael about this this morning and I can ask for his advice. I am not really otherwise connected in the Muslim community. Unfortunately Tyseer Aboulnasar, our previous dean of Engineering, probably supports this part of Rancourt's complaint.

I sent Wael links to two student articles in the Fulcrum. Are there other published articles you know of?

From: Allan Rock
Sent: Sunday April 19, 2009 10:38 AM
To: Bruce Feldthusen
Subject: RE: Please sign the petition/Prof. Rancourt

Bruce:

Who do we know that can circulate a response to this fiction? It is important for the members of the community to know that:

1. Far from having had "an impeccable pedagogic career", Rancourt has spent the last several years undermining pedagogy, denying students access to an education and engaging in a cynical mockery of the whole education process; and
2. Rancourt is trafficking in fictions to try to save his own skin while recklessly and irresponsibly creating tensions in Ottawa's religious communities. (As to "fiction", I refer to the example of his lying about me going to Israel last July.)

How best to get the facts out?

Allan

From: Bruce Feldthusen
Sent: Saturday April 18, 2009 5:30 PM
To: Allan Rock
Subject: FW: Please sign the petition/Prof. Rancourt

Vice-recteur à la gouvernance - Vice-President, Governance

From: Allan Rock
Sent: Sunday April 19, 2009 11:15 AM
To: Bruce Feldthusen
Subject: Check this out

Zionist Conspiracy - http://zioncon.blogspot.com/

From: Bruce Feldthusen
Sent: Sunday April 19, 2009 10:41 AM
To: Allan Rock
Subject: RE: Please sign the petition/Prof. Rancourt

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I sent Wael links to two student articles in the Fulcrum. Are there other published articles you know of?

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Sent: Sunday April 19, 2009 10:38 AM
To: Bruce Feldthusen
Subject: RE: Please sign the petition/Prof. Rancourt

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Who do we know that can circulate a response to this fiction? It is important for the members of the community to know that:

1. Far from having had "an impeccable pedagogic career", Rancourt has spent the last several years undermining pedagogy, denying students access to an education and engaging in a cynical mockery of the whole education process; and
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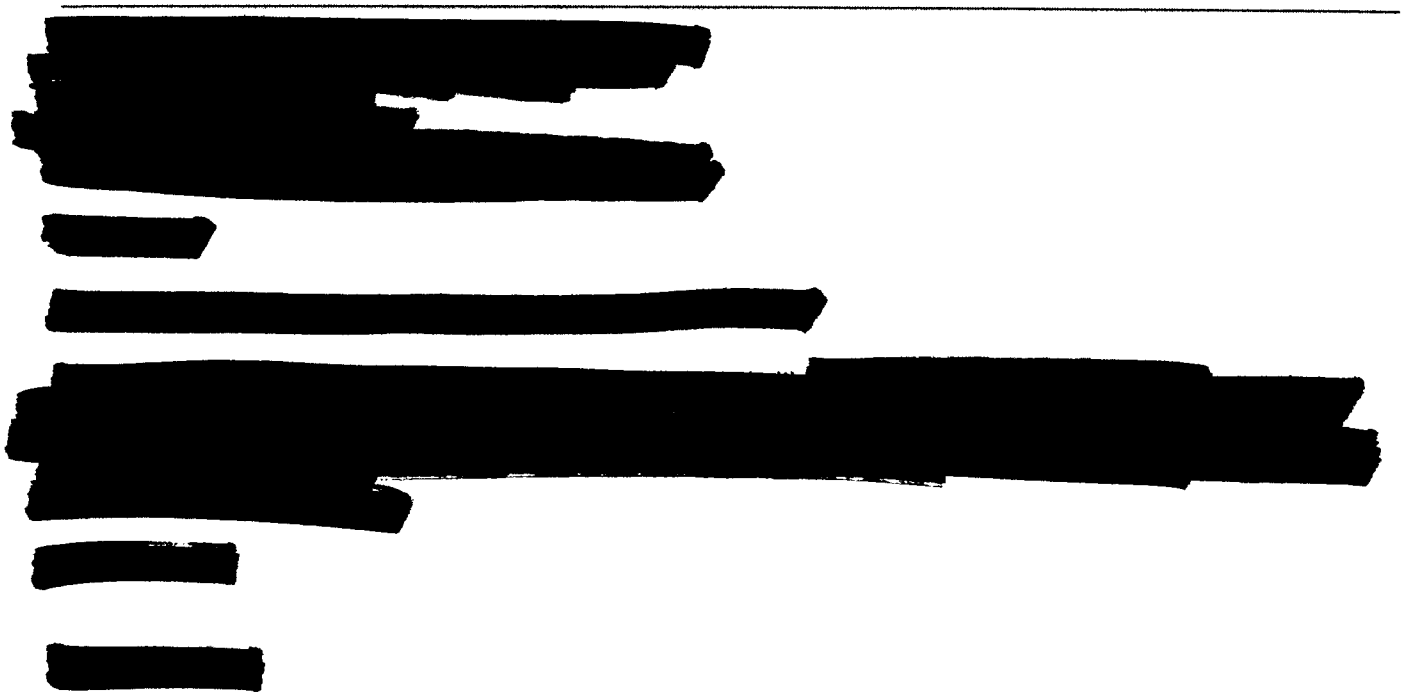
How best to get the facts out?

Allan

From: Bruce Feldthusen
Sent: Saturday April 18, 2009 5:30 PM
To: Allan Rock
Subject: FW: Please sign the petition/Prof. Rancourt

Heads up.

Bruce Feldthusen
Doyen/Dean
Faculté de Droit/Faculty of Law
Common Law
Université d'Ottawa/University of Ottawa
57 Louis Pasteur
Ottawa K1N 6N5 CANADA
613-562-5927



University of Ottawa fired Dr. Rancourt after 23 years of impeccable pedagogic career, because the Israeli Lobby does not agree with his views on the Israeli occupation of Palestine, apparently, neither does Allan Rock.

http://rancourt.academicfreedom.ca/component/content/article/25.html

Tab 14-15

This is Exhibit "F"

to the Affidavit of Denis Rancourt,

sworn before me this

23 day of April, 2012.

Marie Arsenault

187

Vice-recteur à la gouvernance - Vice-President, Governance

From: Allan Rock
Sent: Monday April 20, 2009 10:11 AM
To: Andrée Dumulon
Cc: Julie Cafley
Subject: Response?

I need your advice about this. Is there any purpose to be served by responding through a "letter to the editor" of this and any other publications that pick up Rancourt's toxic rants, or are we better just to leave it alone?

[redacted]

Rancourt Firing by U. of **Ottawa**: Threat to Canada's Academic Freedom?
Pacific Free Press - Victoria,BC,Canada
The media reported that Mr. Rock's visit "yielded immediate results" as "the **University of Ottawa** agreed to launch an exchange program in law. ...
See all stories on this topic

Allan Rock
Recteur et vice-chancelier/President and Vice-Chancellor
Université d'Ottawa/University of Ottawa
Tel. 613 562 5809

Canada's university
L'université canadienne

Tab 14-17

This is Exhibit "T" to the Affidavit of Denis Rancourt, sworn before me this 16 day of January, 2012.

MR

LINKS TO THIS POST
LABELS: BRUCE FELDTHUSEN, GARY SLATER, ISRAEL LOBBY, LAW, MICHAEL GEIST, PRESS RELEASE, UNIVERSITY OF HAIFA

Did Professor Joanne St. Lewis act as Allan Rock's house negro?

February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters.

The term "house negro" was defined by Malcolm X in his famous "The House Negro and the Field Negro" speech (see video below).

The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom: **HERE**.

The Student Appeal Centre (SAC) of the student union at the University of Ottawa today released documents obtained by an access to information (ATI) request that suggest that law professor Joanne St. Lewis acted like president Allan Rock's house negro when she enthusiastically toiled to discredit a **2008 SAC report** about systemic racial discrimination at the university.

See today's SAC article **HERE**. See ATI documents released today by the SAC **HERE**.

At the time, the St. Lewis report was critiqued by UofOWatch: **HERE**.

The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration:

> The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page.

The SAC article posted today quotes Rock from the ATI documents explaining to his staff how to preserve the appearance of an independent report and the importance of preserving this appearance, in true experienced federal politician style.

This is a most damning revelation against the former Minister of Justice and former Canadian Ambassador to the United Nations, one that should disturb any university student learning about professional ethics.

Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!).

Former VP-Academic **Robert Major** is also found stating to a concerned student that the "independent" St. Lewis report will definitively resolve the matter (of the troublesome SAC report). In his November 2008 email Major actually says:

> *"The University has received and will make public this week an evaluation, by an independent assessor, of the report of the Student Appeals Centre. I believe this analysis will answer your questions on the mandate of the Senate Appeals Committee and on the whole appeals process. I invite you to read it carefully."*

When the bosses have such high professional ethics why would professors be any different?

More on the professional ethics of the bosses **HERE**.

POSTED BY DENIS RANCOURT AT 6:40 PM 18 COMMENTS
LINKS TO THIS POST
LABELS: ACADEMIC FRAUD, ALAN ROCK, JOANNE ST. LEWIS, RACISM, SAC

MONDAY, FEBRUARY 7, 2011

U of O "2 for 1 law degrees" scam was not approved by university Senate

THIS press release was posted today by the University of Ottawa.

Highlights are as follows:

> "... students will receive **two Masters in Laws degrees** ... This exciting dual degree program provides students with the rare opportunity to obtain **two distinct LL.M. degrees after only one year of studies** ... The University Ottawa - University of Haifa program is generously supported by the *Gerald Schwartz and Heather Reisman Foundation* ... Additionally, the program affords students unfamiliar with Israel an opportunity to experience the country first-hand ..." (**emphasis added**)

As historic background, readers of UofOWatch will recall:

"In July 2008 the media reported that Allan Rock participated in a trip to Israel “partly financed by the Canadian Council for Israel and Jewish Advocacy (CIJA)”, along with five other Canadian university presidents. The media reported that Mr. Rock’s visit “yielded immediate results” as “the University of Ottawa agreed to launch an exchange program in law.” After a few months in office, President Allan Rock announced his plan in October 2008 for the University of Ottawa. This plan included what he calls putting “Canada’s University in the service of the World”. In explaining it to students on October 24, 2008, he talked about exchange programs. When one student asked if Palestinian students would be allowed to participate in the exchange

CEO TELFER AND PRESIDENT PATRY

Goldcorp gives $25M to U of O.
Photo credit: University of Ottawa

CEO LAU AND PRESIDENT PATRY

Husky Energy gives $1M to U of O.
Photo credit: University of Ottawa

Tab 14-18

This is Exhibit "B"

to the Affidavit of Denis Rancourt,

sworn before me this

23 day of April, 2012.

Marc Fru

Joanne St. Lewis

From: Joanne St. Lewis
Sent: Monday February 14, 2011 5:19 PM
To: Stephane Emard-Chabot
Cc: Allan Rock
Subject: sample of my responses

Hi there,

I have been receiving emails of support which have given me a sense of the post. They are definitely reinforcing my decision not to look at it. Below is the sample of the responses I am giving to those emails. Let me know if my answer poses a problem. I do feel that I should acknowledge them since people are being quite generous and are greatly concerned about its contents.

All's well at this end,
Joanne

Prof. Joanne St. Lewis
Faculty of Law/*Faculté de droit*
University of Ottawa/*Université d'Ottawa*
✉ 57 Louis Pasteur, Ottawa, ON, K1N 6N5
☎ (613) 562-5800, ext./*poste* 3311
🖷 (613) 562-5124
joanne.stlewis@uottawa.ca

From: Joanne St. Lewis
Sent: Monday February 14, 2011 5:16 PM
To: 'lia.tarachansky@gmail.com'
Subject: RE: Hello Dr. St Lewis

Dear Lia,

Thank you so much for you note.

I actually don't have any professional relationship with Mr. Rancourt beyond the fact that he is a colleague at UofO. In fact, the only time I have spoken with Mr. Rancourt was in response to questions he posed as a member of the audience when I made a presentation on independent media. I did not know who he was at the time. I only learned who he was after the event. I have had no other contact with him.

The present circumstances are unfortunate and I appreciate your support. I will let things stand and hope that he gains much needed perspective from the dialogue that others like yourself are engaging in with him.

Thanks again,
Joanne

Prof. Joanne St. Lewis
Faculty of Law/*Faculté de droit*
University of Ottawa/*Université d'Ottawa*
✉ 57 Louis Pasteur, Ottawa, ON, K1N 6N5
☎ (613) 562-5800, ext./*poste* 3311
🖷 (613) 562-5124

joanne.stlewis@uottawa.ca

From: lia.tarachansky@gmail.com [mailto:lia.tarachansky@gmail.com] **On Behalf Of** Lia Tarachansky
Sent: Monday February 14, 2011 3:28 PM
To: Joanne St. Lewis
Subject: Hello Dr. St Lewis

Dear Professor Joanne St. Lewis,

I'm not sure if you at all remember me, but years ago I used to sneak into your talks about independent media. Back then you used to do a lot of talking with Dr. Denis Rancourt. In 2007 I organized the unSchooling Oppression conference with a group of students he put together. He was later asked to leave the group after he made some very bizzare comments towards the people of colour in the group, based on his principle that hate speech is a form of free speech.

I've kept in touch with Denis and in many ways still respect his work, however his latest blog on UofO watch, where he refers to you in derogatory and racist language is really disturbing. I wanted to write to you to say I'm sorry that you have been forced to endure such a disgusting attack. I've written to him condemning his post. It would appear that he's seeking feedback and has received quite a bit, so if it is any consolation, it looks like there are many people who feel the same about this.

I hope you're doing well,

Lia

Lia Tarachansky
Middle East Correspondent
Tel: (647) 702-0986 (CDN)
Tel: (052) 707-3420 (ISR/PAL)
Personal: www.liatarachansky.com
Company: www.therealnews.com

Tab 14-19

This is Exhibit "A"

to the Affidavit of Denis Rancourt,

sworn before me this

23 day of April, 2012.

MARCIA GREEN

Joanne St. Lewis

From: Joanne St. Lewis
Sent: Monday February 14, 2011 5:06 PM
To: Allan Rock
Cc: Stephane Emard-Chabot
Subject: FW: About Joanne St. Lewis and Allan Rock

Hi there Allan,

I make it a practice to delete the communications from Mr. Rancourt and have done that in this case. It has spared me a great deal of aggravation in the past.

Do let me know if you want me to do anything. I will happy to fit into whatever strategy you decide but until then I intend to make no comment.

Do take care,

Joanne

Prof. Joanne St. Lewis
Faculty of Law/*Faculté de droit*
University of Ottawa/*Université d'Ottawa*
57 Louis Pasteur, Ottawa, ON, K1N 6N5
(613) 562-5800, ext./*poste* 3311
(613) 562-5124
joanne.stlewis@uottawa.ca

From: Denis Rancourt [mailto:denis.rancourt@gmail.com]
Sent: Friday February 11, 2011 8:14 PM
To: Allan Rock; Cabinet du recteur - Office of the President; Joanne St. Lewis
Subject: About Joanne St. Lewis and Allan Rock

Dear Mr. Rock and Ms. St. Lewis,

This blog post is about you:
http://uofowatch.blogspot.com/2011/02/did-professor-joanne-st-lewis-act-as.html

Please provide any factual corrections or comments for posting.

Yous truly,
Denis Rancourt

This is Exhibit No. 3
on the examination of: 200
Ms St. Lewis in
St Lewis v Rancourt
Held on April 23, 2012
Exam # 12-0108 (fp)
CATANA
REPORTING SERVICES

Cabinet du recteur - Office of the President

Subject: Mtg with Bruce Feldthuse
Location: TBT - 212

Start: Fri 15/04/2011 11:00 AM
End: Fri 15/04/2011 11:30 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Allan Rock
Required Attendees: Allan Rock; Bruce Feldthusen
Optional Attendees: Joanne St. Lewis; Dearden, Richard

Tab 14-22

Note :

- Meeting with Bruce Feldthusen.
- Approved by Stéphane. Mjoe 11/04/11

Contact:
Dany Chung – 5927
Mjoe 5809

Correspondance:

Cabinet du recteur - Office of the President

Subject:	Mtg with Bruce Feldthusen - AR
Location:	TBT - 212
Start:	Fri 15/04/2011 11:00 AM
End:	Fri 15/04/2011 11:30 AM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Allan Rock
Required Attendees:	Allan Rock; Bruce Feldthusen
Optional Attendees:	Joanne St. Lewis; Dearden, Richard

Note :

- Meeting with Bruce Feldthusen.
- Approved by Stéphane. Mjoe 11/04/11

Contact:
Dany Chung – 5927
Mjoe 5809

Correspondance:

Peter K. Doody
T 613.787.3510
pdoody@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St Suite 1100
Ottawa ON Canada K1P 1J9
T 613.237.5160
F 613.230.8842
blg.com

Borden Ladner Gervais

Tab 15-23

File No. 308227-000158

April 18, 2012

Delivered by Hand

Mr. Denis Rancourt
[redacted]

Dear Mr. Rancourt

Re: St. Lewis v. Rancourt

I am writing this letter to accompany the documents delivered in response to the Notice of Examination to Mr. Allan Rock, dated April 9, 2012.

Enclosed with this letter you will find a number of documents responsive to the demand in the Notice of Examination. My client is not, however, providing all of the documents which you have demanded. I will set out in this letter the documents provided in response to each of the categories in your Notice of Examination, and my client's position with respect to documents not provided.

"Late Spring of 2011" Meeting with Joanne St. Lewis and Bruce Feldthusen

I enclose herewith:

1. printout from Allan Rock's calendar system, with the subject "Mtg with Bruce Feldthusen – AR", starting at 11:00 AM on April 15, 2011;

2. email from Dany Chung to Office of the President, April 11, 2011, 9:15 AM;

3. email from Office of the President to Stephane Emard-Chabot, April 11, 2011, 9:46 AM;

4. email from Stephane Emard-Chabot, April 11, 2011, 9:54 AM.

I am advised that the University has been unable to locate any other documents fitting the description under this heading in the Notice of Examination.

David Scott Letter, dated October 25, 2011

I enclose herewith the following document:

1. a series of emails between David Scott and Richard Dearden, commencing October 24, 2011 at 11:47 AM and concluding October 26, 2011 at 1:49 PM.

All other documents coming within the description contained in the Notice of Examination are subject to solicitor-client privilege and will not be produced.

"Made Aware" the "Administrative Committee" and the "Board of Directors"

I am advised that the only documents coming within the description of these matters in the Notice of Examination are the extracts of the Minutes attached as Exhibits "B" and "C" to Mr. Rock's Affidavit sworn February 21, 2012.

"First Became Aware of that Fact"

I am advised that there are no documents in the possession or control of the University which fit the description contained in the Notice of Examination under this heading.

St. Lewis v. Rancourt Litigation and its Funding

I enclose herewith the following documents:

1. email from you to Alain Roussy dated Thursday, September 15, 2011, at 9:23 PM, together with other emails forwarded therewith;

2. email from Alain Roussy to Diane Davidson dated Monday, October 27, 2011, at 11:03 AM with a number of attachments, including a letter from you to Alain Roussy dated October 7, 2011;

3. email from you to Alain Roussy and others dated Monday, October 17, 2011, at 12:40 PM, together with a number of attachments, including another copy of the aforesaid letter from you to Mr. Roussy dated October 17, 2011;

4. email from Alain Roussy to Allan Rock and Diane Davidson dated Monday, October 17, 2011 at 6:19 PM, forwarding the above-noted email from you to Alain Roussy sent October 17, 2011 at 12:40 PM;

5. email from Julie Tanguay to Allan Rock and Louis De Melo dated Saturday October 29, 2011 at 8:09 AM, forwarding an Ottawa Citizen story;

6. email from Julie Tanguay to Allan Rock and Louis De Melo dated Thursday November 3, 2011 at 5:48 AM, forwarding an Ottawa Citizen story;

7. email from Alain Roussy to Kathryn Prud'Homme and Diane Davidson, dated Thursday, November 3, 2011 at 9:22 AM, forwarding the aforesaid email from Julie Tanguay dated November 3, 2011 at 5:48 AM.

The other documents you have requested in item #5 under this heading in the Notice of Examination are not relevant to the issues in your champerty motion. In particular, documents in respect of the quantum of fees or payable to Professor St. Lewis' counsel are not relevant to the issues on the champerty motion. Nor are issues relating to the quantum of fees paid or payable to the University of Ottawa's counsel.

I enclose the following documents with respect to the items referred to in item #6 under this heading in the Notice of Examination:

1. printout from accounting spreadsheet entitled "CL313o/31834/Routes to Freedom Fund (Closed);

2. document entitled "Terms of Reference for an Endowed Fund" – Black Students Law Scholarship";

3. document entitled "University of Ottawa Academic Conference Final Report; and

4. printout form internet, entitled "Routes to Freedom": A Celebrated Event".

I am advised that the University has been unable to locate any documents setting out the terms of reference for the Danny Glover Routes to Freedom Graduate Law Students Scholarship Fund or any other documents, other than these, which meet the description in your item #6.

University's Improper Motive – Malice

The University declines to produce any documents described under this heading in the Notice of Examination. If any documents described herein exist, they are not relevant to the issues on the champerty motion.

Yours very truly

Peter K. Doody

PKD/js
Encls.
c Mr. Richard Dearden
OTT01\5029882\v1

Cabinet du recteur - Office of the President

Subject: Mtg with Bruce Feldthusen - AR
Location: TBT - 212

Start: Fri 15/04/2011 11:00 AM
End: Fri 15/04/2011 11:30 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Allan Rock
Required Attendees: Allan Rock; Bruce Feldthusen
Optional Attendees: Joanne St. Lewis; Dearden, Richard

Note :

- Meeting with Bruce Feldthusen.
- Approved by Stéphane. Mjoe 11/04/11

Contact:
Dany Chung – 5927
Mjoe 5809

Correspondance:

Cabinet du recteur - Office of the President

From: Stephane Emard-Chabot
Sent: April-11-11 9:54 AM
To: Cabinet du recteur - Office of the President
Subject: RE: DEMANDE DE RENCONTRE - Bruce Feldthusen

Oui, stp.

Stéphane Émard-Chabot

Chef de cabinet | Chief of Staff
Cabinet du recteur | Office of the President
Université d'Ottawa | University of Ottawa

613-562-5800 x 1032 stephane.emard-chabot@uottawa.ca

From: Cabinet du recteur - Office of the President
Sent: Monday April 11, 2011 9:46 AM
To: Stephane Emard-Chabot
Subject: DEMANDE DE RENCONTRE - Bruce Feldthusen

Allo Stéphane,

Es-tu d'accord que je lui donne cette semaine?

Merci,
Mjoe

From: Dany Chung
Sent: Monday April 11, 2011 9:15 AM
To: Cabinet du recteur - Office of the President
Subject: Meeting with President Rock

Hi Marie Josée

Dean Feldthusen would like to schedule a meeting with Mr. Allan Rock pertaining a subject matter which I'll summarize as "Deflamation Action". He will be accompanied by Professor Joanne St Lewis. Dean Feldthusen will call Stephane Emard Charbot some time today for more details. In the meantime could you please let me know if either of the following time is convenient for Mr. Rock. Thank you.

April 12 - 9:00 to 17:00
April 13 - 9:00 to 11:00 or 14:00 to 17:00 April 15 - 9:00 to 17:00 April 18 - 9:00 to 17:00 April 19 - 14:00 to 17:00 April 20 - 9:00 to 17:00 April 22 - 9:00 to 17:00

Ms. Dany Chung
Cabinet du doyen / Dean's Office
Faculté de droit / Faculty of Law

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

Tab 15-30

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

AFFIDAVIT OF JOANNE ST. LEWIS
(Defendant's Champerty Motion)

I, Joanne St. Lewis, of the City of Ottawa in the Province of Ontario, **MAKE OATH AND SAY:**

I. INTRODUCTION

1. I am an Assistant Professor in the Common Law Section of the Faculty of Law of the University of Ottawa. I have been employed by the University of Ottawa since 1989. I received my tenure in 2001.

2. I swear this Affidavit to oppose the Defendant's motion seeking to have my libel action against him stayed or dismissed on the ground that my libel action is vexatious or is otherwise an abuse of process pursuant to Rule 21.01(3)(d) of the *Rules of Civil Procedure*. I adamantly deny that my libel action against the Defendant is based on a champertous agreement as alleged in his Notice of Motion. As detailed below, the Defendant has published false and defamatory statements and racial slurs about me that directly attack my personal reputation and my professional reputation as a lawyer and a Law Professor. My libel action against the Defendant relates only to his defamatory and racist publications and is solely about restoring my reputation.

> you. Your defamatory remarks about Professor St. Lewis were occasioned by work which she undertook at the request of the University and in the course of her duties and responsibilities as an employee. Her efforts were not personal, but in the interests of the University. Furthermore, your outrageously racist attack upon her takes this case out of the ordinary and, in the view of the University, alone creates a moral obligation to provide support for her in defence of her reputation.

19. The University of Ottawa has no control whatsoever over how I conduct my libel action against the Defendant and has no input into the instructions I provide to my counsel in the conduct of my libel action against the Defendant.

20. At no time did anyone at the University of Ottawa request that I commence an action against the Defendant – this was solely my decision and one that I made as soon as I read the Defendant's "house negro" article in April, 2011. At all times, I was the person who decided that I had to sue the Defendant to restore my personal reputation and professional reputation as a lawyer and a Professor of Law.

IV. THE DANNY GLOVER ROUTES TO FREEDOM GRADUATE LAW STUDENT SCHOLARSHIP

21. In March, 2008 I organized a conference, "Routes to Freedom: Reflections on the Bicentenary of The Abolition of the Slave Trade" at the University of Ottawa's Faculty of Law to celebrate the Bicentenary of the abolition of the slave trade.

22. I was the creative force behind the two endowment funds established to commemorate the conference. The funds are still in the capital endowment stage and will be used for two scholarships. The scholarships are intended to ensure contemporary recognition of the impact of the slave trade, contribute to new scholars in the fields of social justice and international law and support the growth of young academics from continental Africa.

23. The first fund established an undergraduate scholarship for an upper year Ontario student with financial need pursuing our international law or social justice options. The second fund, the Danny Glover Routes to Freedom Graduate Scholarship, is intended for a doctoral fellowship for a student from continental Africa who will pursue full-time studies in international law or social justice. The Scholarship was announced at a press

Supreme Court of Canada
Registry

Cour suprême du Canada
Greffe

April 11, 2013

Tab 15-32

Denis Rancourt
[redacted]

Attention: Denis Rancourt

Dear Mr. Rancourt,

RE: *Denis Rancourt*
v.
Joanne St. Lewis, et al.
File No.: 35305

This will acknowledge receipt of your application for leave to appeal to the Supreme Court of Canada, which application has been accepted for filing.

The Court file number in this case is 35305. All parties are asked to refer to this number in any communication with the Registry Branch concerning the above proceedings.

Please do not hesitate to contact an officer of the Registry Branch at (613) 996-8666 if you have any questions concerning this matter.

Yours truly,

Nathalie Beaulieu

Nathalie Beaulieu
Registry Officer

c.c.: Mr. Richard G. Dearden
Mr. Peter Doody

301, rue Wellington Street, Ottawa, Ontario, Canada K1A 0J1
Tel./Tél. : 613 996-8666 • 1 888 551-1185 • Fax/Téléc. : 613 996-9138
Internet : www.scc-csc.gc.ca • E-mail/Courriel : registry-greffe@scc-csc.ca

Supreme Court of Canada

Cour suprême du Canada

April 8, 2013

Denis Rancourt
[redacted]

Re: Denis Rancourt v. Joanne St. Lewis et al

Dear Mr. Rancourt:

Further to my letters of January 25 and February 22, 2013 in regard to the above matter, I am writing to correct any misunderstanding which my letters may have caused.

Accordingly, I wish to advise that if you wish to file an application for leave to appeal and providing that your documents are otherwise in compliance with the Act and Rules, your application will be accepted for filing and will be submitted to a panel of the Court for a determination, in accordance with s. 43 of the *Supreme Court Act* and Part 5 of the *Rules of the Supreme Court of Canada*.

The views which were expressed in my earlier correspondence do not prejudice your position before the Court.

If you have any additional questions, please call the Registry Branch at 613-996-8666 or 1-888-551-1185.

Yours truly,

Roger Bilodeau, Q.C.
Registrar

cc: Mr. Richard Dearden
Mr. Peter Doody

301, rue Wellington Street, Ottawa, Ontario, Canada K1A 0J1
Tel./Tél. : 613 996-8666 • 1 888 551-1185 • Fax/Téléc. : 613 996-9138
Internet : www.scc-csc.gc.ca • E-mail/Courriel : registry-greffe@scc-csc.gc.ca

File number: _____

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE ONTARIO SUPERIOR COURT OF JUSTICE)

BETWEEN:

Denis Rancourt

Applicant
(Defendant)

and

Joanne St. Lewis

Respondent
(Plaintiff)

and

University of Ottawa

Respondent
(Intervening Party)

APPLICATION FOR LEAVE TO APPEAL
FILED BY THE APPLICANT, DENIS RANCOURT (SELF-REPRESENTED)
(Pursuant to s. 40 of the Supreme Court Act, R.S.C. 1985, c. S-26)

Denis Rancourt, Applicant, Self-Represented

Email: denis.rancourt@gmail.com

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Email: pdoody@blg.com

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Memorandum of Argument

Part I — Public Importance and Concise Statement of Facts

1. The right to be heard and the right to a fair hearing free of real or apparent bias are the foundations of the common law. As such, Canadian courts have found that a pleading of reasonable apprehension of bias must be considered in detail, and that tainted decisions cannot stand, whether final or interlocutory. Furthermore, the right to an impartial decision-maker is a cornerstone of all legal systems in democratic societies and is enshrined in s. 15(1) of the *Charter*.

2. The present case exposes a serious loophole and barrier to natural justice in the Ontario legal system, which permits a complaint of reasonable apprehension of bias to be left undecided, and finally barred at the court of first instance, without ever being heard on the merits.

3. Normally, a judge presiding on an interlocutory motion would hear and determine any complaint of reasonable apprehension of bias. But what happens if the judge refuses to deal with a bias concern on its merits; if the court refuses to make a judicial determination of the bias question?

4. In such a situation, in Ontario, the only remaining avenue is to bring a motion to a single judge of the same lower court for leave to appeal to the *Divisional Court*. Thus, pursuant to the *Rules of Civil Procedure*[1], a concern of bias can be suppressed by the lower court without ever being heard on its merits.

[1] Rule 62.02, esp. Rule 62.02(4), in conjunction with s. 19(1)(b) of the *Courts of Justice Act*.

5. As such, the Ontario legal system contains a systemic barrier[2] against having a reasonable apprehension of bias complaint heard on its merits, and permits the lower court to circumvent its obligation to make the determinations both of the bias question and of the remedies that necessarily follow. The result is an "in-house" procedural termination, which has effect irrespective of the factual strength of the bias concern.

6. In Ontario, there is no mechanism or directive to compel a judge of first instance in an interlocutory motion to fulfill his obligation to address a bias concern on its merits. It is the applicant's position that this procedural loophole is a denial of a litigant's *Charter* right to equality before and under the law, which affects every citizen in the province.

7. The present case is an instance of this anomaly: The applicant's complaint of apparent bias based on cogent evidence was never heard on its merits, despite being repeatedly and duly raised, but rather was finally barred by the court of first instance; thus denying the applicant the remedies that necessarily and immediately follow any judicial determination of reasonable apprehension of bias. The affected interlocutory decisions barred the applicant from material evidence in an abuse of process motion that could end the action, and cannot be reviewed at a later stage.

8. There is a national interest that a bias concern cannot be finally barred as a procedural consequence; that a bias complaint cannot be circumvented by the court where it is raised; and cannot be finally barred by that same court. Canadians need a justice system that unquestionably is and appears to be just, in all of its judicial actions in every court.

[2] "The test … is an onerous one"; Lower court judgement of November 29, 2012, at paras. 34-35

Concise procedural history

9. The ongoing lower court action, heard in bilingual proceeding, is a $1 million private defamation lawsuit filed on June 23, 2011 with the *Ontario Superior Court of Justice*, over comments on a blog critical of the University of Ottawa. The plaintiff is a law professor at the University, and the defendant (applicant) is a former physics professor at the same University.

10. On October 25, 2011, the University disclosed that it is entirely funding the plaintiff's litigation. In addition, the plaintiff asserts in her statement of claim that she plans to donate part of the proceeds of the action to a scholarship fund in the law faculty at the University.

11. Thus, on January 5, 2012, the applicant (defendant) filed a motion to stay the action for abuse of process on the grounds of maintenance and champerty ("champerty motion"). The case management judge ("first judge") granted intervener status to the University in the champerty motion, scheduled out-of-court examinations of several witnesses, and presided over a resulting defendant's (applicant's) refusals and productions motion ("refusals motion").

12. The first day of hearing of the refusals motion was June 20, 2012. The hearing was to continue on July 24, 2012. On July 22, 2012 the applicant (defendant) discovered an April 24, 2012 newspaper article on the internet which reported that the first judge had established a scholarship endowment fund at the University, that a meeting room was named in honour of the judge's deceased son at the law firm representing the University, and that both these matters were of profound personal and emotional importance to the judge.

13. Consequently, the applicant first brought forward his reasonable apprehension of bias concern on July 24, 2012. The first judge threatened the applicant with contempt of court

if the applicant continued in the hearing to advance the bias concern; then the judge recused himself for reasons other than actual or apparent bias, and stated that he could not be impartial moving forward because of the manner in which the applicant had raised the concern.

14. The Regional Senior Justice immediately assigned a replacement case management judge ("second judge"). The second judge continued the interrupted refusals motion both at a hearing on July 27, 2012, and via written submissions until August 10, 2012, when the last written submissions were served and filed. The applicant (defendant) participated while objecting to the thus continued refusals motion.

15. The first judge released Reasons for his decisions from the June 20, 2012 hearing in the incomplete refusals motion on August 2, 2012, nine days after recusing himself on July 24, 2012. The second judge released his Reasons for part of the same refusals motion on September 6, 2012.

16. The said August 2, 2012 Reasons of the first judge in the refusals motion barred the applicant (defendant) from material evidence for his champerty motion to end the action, which was heard on December 13, 2012.

17. Prior to the August 10, 2012 closing of written submissions in the refusals motion, the applicant made several attempts to have his concern of apparent bias addressed by the lower court, including[3]:
    (a) a July 25, 2012 letter to the Regional Senior Justice of the lower court; and
    (b) a July 26, 2012 motion for directions, to be heard on July 27, 2012; and
    (c) a motion for a judicial determination of reasonable apprehension of bias, served and filed on July 30, 2012; and
    (d) an August 8, 2012 motion to the lower court for leave to appeal to the *Divisional Court*.

[3] Exhibits 4 to 8 in the applicant's supporting affidavit of January 2013.

18. The second judge (and new case management judge):
    (a) stayed the applicant's said motion for directions on July 27, 2012; and
    (b) dismissed the applicant's said motion for judicial determination of reasonable apprehension of bias, without a hearing on the merits, by letter dated July 31, 2012.

19. The applicant's (defendant's) August 8, 2012 motion to the lower court for leave to appeal to the *Divisional Court*, was to seek leave to appeal from both:
    (a) the June 20, 2012 and August 2, 2012 decisions of the first judge, on the grounds of reasonable apprehension of bias; and
    (b) the July 31, 2012 decision of the second judge to dismiss without a hearing on merits the July 30, 2012 motion for a judicial determination of reasonable apprehension of bias.

20. The said leave to appeal motion was heard by a third judge of the *Ontario Superior Court of Justice* on November 15, 2012. The Reasons were released on November 29, 2012. The honourable lower court leave to appeal motions judge found that leave to appeal to the *Divisional Court* should not be granted, in that[4]:
    (a) "This is not a case that could possibly give rise to a reasonable apprehension of bias … "; and
    (b) "I cannot see any problem with a Case Management Judge refusing to set down a motion entirely void of merit, such as occurred here when the defendant's request was to set aside the decision of a fellow Superior Court judge on grounds of apprehension of bias."

[4] Lower court judgement of November 29, 2012, at paras. 40, 47

Cogent evidence for appearance of bias

21. The cogent evidence supporting a reasonable apprehension of bias includes[5]:
    (a) A terms of reference contract for a law faculty scholarship endowment fund between the first judge and the University of Ottawa, an intervening party; and
    (b) A boardroom named in honour of the first judge's deceased son, at the law firm representing the University of Ottawa; and
    (c) A newspaper article quoting the first judge expressing the personal and emotional importance to him of the said scholarship fund and of the said boardroom honour; and
    (d) The fact that, at the hearing where the bias concern was first raised, the first judge threatened the applicant with contempt of court if the applicant continued to advance the concern.

22. The cogent evidence supporting an appearance of bias occurred in circumstances where:
    (a) the first judge had not disclosed his ties to the intervener, the University of Ottawa, and to its counsel; and
    (b) the champerty motion in issue alleged bad faith of the University, such that the decisions of the first judge in the champerty motion could impact the reputation of the University and its scholarships; and
    (c) consequently, there is a reasonable appearance that the first judge had a shared interest in the outcome of the champerty motion.

[5] Applicant's supporting affidavit of January 2013, paras. 3-5; and affidavit exhibits 1 to 3.

The reasonable apprehension of bias concern was never heard on its merits

23. The applicant's complaint of reasonable apprehension of bias against a single judge of the *Ontario Superior Court of Justice* was repeatedly brought and repeatedly not heard by the lower court:
    (a) First, by the first judge who recused himself for a stated judicial reason other than actual or apparent bias, in mid-hearing of a refusals motion within the champerty motion that could end the action in the lower court;
    (b) Then, by the second judge, who decided to continue the said refusals motion while denying to schedule a defendant's motion for a judicial determination of reasonable apprehension of bias; and
    (c) Finally, by a leave to appeal motions judge of the lower court who found that the matter did not need to be considered by the *Divisional Court* for Ontario.

24. Thus, an application of the court *Rules* resulted in the perverse outcome that although three judges from the court of first instance were independently involved, none of them dealt with the reasonable apprehension of bias complaint on its merits. In the present case, the Court needs to intervene to provide directives so that this cannot occur, and to protect the litigant's *Charter* right to an impartial decision-maker.

Part II — Questions in Issue

25. The instant case gives rise to essential questions touching foundational principles for Canada's justice system, including:

    (i) *Does s. 15(1) of the Charter encompass a right for every individual litigant to an impartial process, both real and apparent?*

    (ii) *Does the common law principle of "automatic disqualification" apply in Canada, and, if so, what form does it take?*

    (iii) *Is Rule 62.02 of the Ontario Rules of Civil Procedure unconstitutional, in that it permits a complaint of bias to be finally barred at the court of first instance without a hearing on merits, and, by extension:*

    (a) Does a court of first instance have an obligation to hear a complaint of bias on merits; and

    (b) What test should apply for granting leave to appeal at first instance, in circumstances involving a reasonable apprehension of bias?

Part III — Statement of Argument

Unconstitutionality of a permitted discretion to not determine apparent bias on merits

26. Section 15(1) of the *Canadian Charter of Rights and Freedoms* states:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

27. Although the Court has determined the law regarding the particularized discrimination component of s. 15(1)[6], the Court has not substantively addressed the question of whether s. 15(1) is also meant, in an absence of proven institutional or systemic discrimination, to encompass the common law principle of individual equality before and under the law, which implies an individual's right to an impartial court both in reality and in appearance.

28. The applicant's position is that s. 15(1) is meant to provide *Charter* protection to the individual regarding equality before and under the law, including real and apparent impartiality in all judicial processes, irrespective of any added component of institutional or systemic discrimination, and that s. 15(1) in no way excludes from *Charter* protection the common law principle of equality for the individual.

29. The applicant's said position is based on both the inclusive and particularized wording of s. 15(1), and on the paramount common law doctrine of equality itself, which drives the requirement for judicial impartiality.

30. Thus, procedural rules of lower courts which permit a reasonable apprehension of bias complaint, based on cogent evidence, to be finally dismissed within the lower court, without a hearing on merits, are submitted to be unconstitutional.

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[6] Canadian Charter of Rights Decisions Digest, Section 15(1), CanLII

31. The impugned rule is Rule 62.02 of the Ontario *Rules of Civil Procedure* for leave to appeal from an interlocutory order from a judge of the *Ontario Superior Court of Justice*. The *Ontario Court of Appeal* has determined that a refusal to grant leave to appeal of an interlocutory order is final, in that the only avenue is to seek leave to appeal from the same court again[7], and that a judicial declining of jurisdiction is the only exception whereby such further leave may be granted[8]:

> … It is also established that our court will not permit an appellant to circumvent the requirement of obtaining leave to appeal by complaining about the correctness of the decision of the judge or tribunal that declined to give that leave. An order granting or refusing leave is not a final order. In the very limited circumstances in which such an interlocutory order could be reviewed, redress must be had to the Divisional Court with leave.

32. In the instant case, the leave to appeal motions judge did not decline jurisdiction, but rather applied his discretion to deny leave to appeal for the requested judicial determination of reasonable apprehension of bias on the merits. The apparent bias question was not determined by the leave to appeal motions judge since the said judge did not have jurisdiction to find reasonable apprehension of bias, but only to grant or deny leave to appeal to the *Divisional Court*[9].

33. The Court has jurisdiction pursuant to s. 41(1) of the *Supreme Court Act* to review a denial of leave to appeal to a lower appellate court, where there is a risk that a question of major constitutional importance might otherwise be put beyond the possibility of review by the Court, or where it perceives legal principles of national significance to be at stake[10].

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[7] *Mignacca v. Merck Frosst Canada Ltd.*, 2009 ONCA 393 (CanLII), at para. 21
[8] *Hillmond Investments Ltd. v. Canadian Imperial Bank of Commerce*, 1996 CanLII 413 (ON CA), first para. of Conclusion
[9] Rule 62.02, Ontario *Rules for Civil Procedure*
[10] *MacDonald v. City of Montreal*, [1986] 1 SCR 460

National importance of judicial impartiality

34. In *R. v. S. (R.D.)*, the Court expressed the importance of the issue of real or apparent bias in the strongest of terms, and its necessary resolution in any judicial process as[11]:

> The courts should be held to the highest standards of impartiality. Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer. The trial will be rendered unfair if the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the informed and reasonable observer. Judges must be particularly sensitive to the need not only to be fair but also to appear to all reasonable observers to be fair to all Canadians of every race, religion, nationality and ethnic origin.
>
> If actual or apprehended bias arises from a judge's words or conduct, then the judge has exceeded his or her jurisdiction. This excess of jurisdiction can be remedied by an application to the presiding judge for disqualification if the proceedings are still underway, or by appellate review of the judge's decision. A reasonable apprehension of bias, if it arises, colours the entire trial proceedings and cannot be cured by the correctness of the subsequent decision. The mere fact that the judge appears to make proper findings of credibility on certain issues or comes to the correct result cannot alleviate the effects of a reasonable apprehension of bias arising from the judge's other words or conduct. […]
>
> 113. … It is a finding that must be carefully considered since it calls into question an element of judicial integrity. Indeed an allegation of reasonable apprehension of bias calls into question not simply the personal integrity of the judge, but the integrity of the entire administration of justice. … Where reasonable grounds to make such an allegation arise, counsel must be free to fearlessly raise such allegations. …

35. The Court reaffirmed the seriousness of the issue of real or apparent bias in *Wewaykum Indian Band v. Canada*[12]:

> Public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so. […]

[11] [1997] 3 SCR 484, starting at the second para. of the introduction, and at para. 113
[12] [2003] 2 SCR 259, first para. of the introduction, and para. 2

> An allegation that a judgment may be tainted by bias or by a reasonable apprehension of bias is most serious. That allegation calls into question the impartiality of the Court and its members and raises doubt on the public's perception of the Court's ability to render justice according to law. Consequently, the submissions in support of the applicant bands and the other parties have been examined in detail as reflected in the following reasons.

36. In application, the *Ontario Court of Appeal* found that the legal principles and standards concerning apprehension of bias in trials and interlocutory proceedings are identical[13]:

> … the above cases arose from challenges to final decisions rather than interlocutory rulings like the one at issue. In my view, this is not a meaningful difference. … Further, there is no reason why the Divisional Court should approach an interlocutory ruling on bias in a different manner than if the issue was raised after the completion of the proceedings.

37. Nonetheless, the established right to judicial impartiality loses its meaning if there is not an effective mechanism of enforcement, or if the procedures provide a loophole or a barrier against a litigant freely bringing a bias concern when it occurs[14].

<u>Common law rule of "automatic disqualification" in Canada</u>

38. The Court has given consideration to whether the common law rule of "automatic disqualification" ought to apply in Canada, but has not had the benefit of a factual matrix where the question can be determined[15]:

> It is necessary to clarify the relationship of this objective standard to two other factors: the subjective consideration of actual bias and the notion of automatic disqualification. … With respect to the notion of automatic disqualification, recent English case law suggests that automatic disqualification is justified in cases where a judge has an interest in the outcome of a proceeding. This case law is not helpful here because automatic disqualification does not extend to judges somehow involved in the litigation or linked to counsel at an earlier stage. In Canada, proof of actual bias or a reasonable apprehension of bias is required. In any event, on the facts of this case, there is no

[13] *Ontario Provincial Police v. MacDonald*, 2009 ONCA 805, at para. 38
[14] In Ontario, Rule 62.02(4) of the *Rules of Civil Procedure*, for leave to appeal from an interlocutory order.
[15] *Wewaykum Indian Band v. Canada*, [2003] 2 SCR 259, second para. of the introduction, and see paras. 70-72

> suggestion that Binnie J. had any financial interest in the appeals, or had such an interest in the subject matter of the case that he was effectively in the position of a party to the cause.

39. In line with a rule of automatic disqualification, the Court has determined that "cogent evidence" that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias can displace the high threshold presumption that judges will carry out their oath of office[16].

40. In application, in line with a rule of automatic disqualification, the *Ontario Court of Appeal* emphasised, citing *Pinochet*[17], that:

> … the nature of the interest is such that public confidence in the administration of justice requires that the judge must withdraw from the case or, if he fails to disclose his interest and sits in judgment upon it, the decision cannot stand. It is no answer for the judge to say that he is in fact impartial and that he will abide by his judicial oath. The purpose of the disqualification is to preserve the administration of justice from any suspicion of impartiality. The disqualification does not follow automatically in the strict sense of that word, because the parties to the suit may waive the objection. But no further investigation is necessary and, if the interest is not disclosed, the consequence is inevitable. *In practice the application of this rule is so well understood and so consistently observed that no case has arisen in the course of this century where a decision of any of the courts exercising a civil jurisdiction in any part of the United Kingdom has had to be set aside on the ground that there was a breach of it.* [Emphasis added by CA[18]]

41. Thus, a judge's non-disclosure of evidence of reasonable apprehension of bias, is a contributing factor in a determination of "automatic disqualification", and in a determination of appearance of bias itself regarding impugned decisions.

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[16] *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 117
[17] *R. v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte*, [1999] 1 All E.R. 577
[18] *Benedict v. The Queen*, 2000 Canlii 16884 (ON CA), at para. 19, citing Lord Hope

42. The *Ontario Court of Appeal* has stressed that with questions of bias, legal technicalities which would prevent a judicial determination of apparent bias must be avoided[19]:

> When the impartiality of a judge is in question, the appearance of bias is just as important as the reality. That is why, when the issue of apparent bias is raised, it is necessary that fine distinctions and legal technicalities be avoided. Although the judge may, with justification, believe that he or she is unbiased, if the appearance of bias is present he or she should withdraw from the case.

43. In application, in line with the principle that a court cannot avoid making a judicial determination of a complaint of apparent bias, the *Divisional Court* for Ontario determined that there is an "obligation" to hear the bias complaint[20]:

> … As is the custom and obligation in such disqualification motions, the judge being asked to disqualify himself on the basis of reasonable apprehension of bias and prejudgment is the judge who hears the disqualification motion. Indeed in this case the Judge would have preferred not to have heard the disqualification motion. …

<u>Application of the law to the facts</u>

44. The applicant was denied a hearing on merits to obtain a judicial determination of reasonable apprehension of bias, despite[21]:
    (a) having raised the bias matter in mid-motion;
    (b) having sought judicial guidance to bring a motion;
    (c) having filed a motion; and
    (d) having sought leave to appeal both:
        (i) from the impugned (tainted) decisions on the grounds of reasonable apprehension of bias; and
        (ii) from the case management denial to schedule a served and filed motion for a judicial determination of reasonable apprehension of bias.

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[19] *Benedict v. The Queen*, 2000 Canlii 16884 (ON CA), at para. 28
[20] *Authorson v. Canada*, [2002] O.J. No. 2050 (ON DC), at para. 1
[21] Applicant's supporting affidavit affirmed January 2013: paras. 5-10, affidavit exhibits 3 to 8.

45. In the instant circumstances, the first judge recused himself, after the bias concern was raised, for stated reasons unrelated to real or apparent bias; the lower court refused to hear a motion for judicial determination of reasonable apprehension of bias; and the leave to appeal motions judge of the lower court used his discretion to end the matter. As a result, the applicant's reasonable apprehension of bias, supported by cogent evidence, was never heard on its merits[22].

46. In contrast, the Court has found that questions of reasonable apprehension of bias impact the integrity of the entire justice system, must be given detailed consideration when they arise, and taint the entire process when present[23, 24].

47. In the instant circumstances, the rules of procedure and the jurisprudence of appeals regarding leave to appeal from interlocutory orders allowed a litigant to be denied a judicial determination of reasonable apprehension of bias, and to be denied the remedies that necessarily follow from such a determination; namely that the tainted decisions cannot stand. Here, the said tainted decisions barred the applicant from material evidence in a motion of abuse of process that could end the action.

48. Real or apparent judicial bias is antithetical to equality before and under the law. The individual's equality before and under the law is a *Charter* right pursuant to s. 15(1). Thus, rules of procedure, such as Rule 62.02 of the Ontario *Rules of Civil Procedure*, that allow a bias question to be finally avoided, without a hearing on merits, using judicial discretion in the lower court where the concern is brought, are unconstitutional.

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[22] *ibid.*; and the lower court judgements of July 31, 2012, August 2, 2012, and November 29, 2012.
[23] *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484
[24] *Wewaykum Indian Band v. Canada*, [2003] 2 SCR 259

49. Furthermore, the factual matrix of the instant case allows a consideration of the conditions under which an "automatic disqualification" rule would apply in Canada, including a consideration of the circumstances of:
    (a) cogent evidence;
    (b) an obligation for a bias concern to be heard by the court in which it is brought;
    (c) appearance of constructive procedural avoidance;
    (d) a judge's non-disclosure of evidence that supports a reasonable apprehension of bias; and
    (e) a judge's shared interest in the outcome of the motion or trial beyond strictly pecuniary considerations.

Part IV — Costs

50. The Applicant seeks costs in an appropriate amount.

Part V — Order Sought

51. The Applicant requests that this application for leave to appeal from the judgement of the *Ontario Superior Court of Justice*, dated November 29, 2012, be granted.

Part VI — Table of Authorities

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Part VII — Statutes, Regulations, and Rules

1. s. 15, *Canadian Charter of Rights and Freedoms*
2. Rule 62.02, *Rules of Civil Procedure* for Ontario
3. *Courts of Justice Act* (Ontario), s. 6(1)-(3) and s. 19(1)-(4)

Charter of Rights and Freedoms

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (84)

MOTION FOR LEAVE TO APPEAL

Leave to Appeal from Interlocutory Order of a Judge

62.**02** (1) Leave to appeal to the Divisional Court under clause 19 (1) (b) of the Act shall be obtained from a judge other than the judge who made the interlocutory order. O. Reg. 171/98, s. 23 (1).

(1.1) If the motion for leave to appeal is properly made in Toronto, the judge shall be a judge of the Divisional Court sitting as a Superior Court of Justice judge. O. Reg. 171/98, s. 23 (1); O. Reg. 292/99, s. 2 (2).

Time for Service of Motion

(2) The notice of motion for leave shall be served within seven days after the making of the order from which leave to appeal is sought or such further time as is allowed by the judge hearing the motion. R.R.O. 1990, Reg. 194, r. 62.02 (2); O. Reg. 14/04, s. 34 (1).

Hearing Date

(3) The notice of motion for leave shall name the first available hearing date that is at least three days after service of the notice of motion. R.R.O. 1990, Reg. 194, r. 62.02 (3).

Grounds on Which Leave May Be Granted

(4) Leave to appeal shall not be granted unless,

(a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or

(b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted. R.R.O. 1990, Reg. 194, r. 62.02 (4).

Motion Record

(5) On a motion for leave, the requirement of rule 37.10 respecting a motion record may be satisfied by,

(a) requisitioning that the motion record used on the motion that gave rise to the order from which leave to appeal is sought be placed before the judge hearing the motion for leave; and

(b) serving and filing a supplementary motion record containing the notice of motion for leave to appeal, a copy of the order from which leave to appeal is sought and a copy of any reasons given for the making of the order as well as a further typed or printed copy of the reasons if they are handwritten. R.R.O. 1990, Reg. 194, r. 62.02 (5).

Factums Required

(6) On a motion for leave, each party shall serve on every other party to the motion a factum consisting of a concise argument stating the facts and law relied on by the party. O. Reg. 14/04, s. 34 (2).

(6.1) The moving party's factum shall be served and filed with proof of service in the court office where the motion is to be heard at least seven days before the hearing. O. Reg. 394/09, s. 30 (1).

(6.2) The responding party's factum shall be served and filed with proof of service in the court office where the motion is to be heard at least four days before the hearing. O. Reg. 394/09, s. 30 (2).

(6.3) Revoked: O. Reg. 394/09, s. 30 (3).

Reasons for Granting Leave

(7) The judge granting leave shall give brief reasons in writing. R.R.O. 1990, Reg. 194, r. 62.02 (7).

Subsequent Procedure Where Leave Granted

(8) Where leave is granted, the notice of appeal required by rule 61.04, together with the appellant's certificate respecting evidence required by subrule 61.05 (1), shall be delivered within seven days after the granting of leave, and thereafter Rule 61 applies to the appeal. R.R.O. 1990, Reg. 194, r. 62.02 (8).

Courts of Justice Act, sections 6 and 19, jurisdiction

Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

[...]

Court of Appeal jurisdiction

6.(1)An appeal lies to the Court of Appeal from,

(a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave of the Court of Appeal as provided in the rules of court;

(b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19 (1) (a) or an order from which an appeal lies to the Divisional Court under another Act;

(c) a certificate of assessment of costs issued in a proceeding in the Court of Appeal, on an issue in respect of which an objection was served under the rules of court. R.S.O. 1990, c. C.43, s. 6 (1); 1994, c. 12, s. 1; 1996, c. 25, s. 9 (17).

Combining of appeals from other courts

(2)The Court of Appeal has jurisdiction to hear and determine an appeal that lies to the Divisional Court or the Superior Court of Justice if an appeal in the same proceeding lies to and is taken to the Court of Appeal. R.S.O. 1990, c. C.43, s. 6 (2); 1996, c. 25, s. 9 (17).

Idem

(3)The Court of Appeal may, on motion, transfer an appeal that has already been commenced in the Divisional Court or the Superior Court of Justice to the Court of Appeal for the purpose of subsection (2). R.S.O. 1990, c. C.43, s. 6 (3); 1996, c. 25, s. 9 (17).

[...]

Divisional Court jurisdiction

19. (1) An appeal lies to the Divisional Court from,

(a) a final order of a judge of the Superior Court of Justice, as described in subsections (1.1) and (1.2);

(b) an interlocutory order of a judge of the Superior Court of Justice, with leave as provided in the rules of court;

(c) a final order of a master or case management master. 2006, c. 21, Sched. A, s. 3.

[…]

Same

(1.2) If the notice of appeal is filed on or after October 1, 2007, clause (1) (a) applies in respect of a final order,

(a) for a single payment of not more than $50,000, exclusive of costs;

(b) for periodic payments that amount to not more than $50,000, exclusive of costs, in the 12 months commencing on the date the first payment is due under the order;

(c) dismissing a claim for an amount that is not more than the amount set out in clause (a) or (b); or

(d) dismissing a claim for an amount that is more than the amount set out in clause (a) or (b) and in respect of which the judge or jury indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in clause (a) or (b). 2006, c. 21, Sched. A, s. 3; 2009, c. 33, Sched. 2, s. 20 (3).

Combining of appeals from Superior Court of Justice

(2) The Divisional Court has jurisdiction to hear and determine an appeal that lies to the Superior Court of Justice if an appeal in the same proceeding lies to and is taken to the Divisional Court. R.S.O. 1990, c. C.43, s. 19 (2); 1996, c. 25, s. 9 (17).

Idem

(3) The Divisional Court may, on motion, transfer an appeal that has already been commenced in the Superior Court of Justice to the Divisional Court for the purpose of subsection (2). R.S.O. 1990, c. C.43, s. 19 (3); 1996, c. 25, s. 9 (17).

Appeal from interlocutory orders

(4) No appeal lies from an interlocutory order of a judge of the Superior Court of Justice made on an appeal from an interlocutory order of the Ontario Court of Justice. R.S.O. 1990, c. C.43, s. 19 (4); 1996, c. 25, s. 9 (17, 18).

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

Tab 15-47

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

MOVING PARTY'S (DEFENDANT'S) FACTUM

(Motion to Stay the Action – Maintenance and Champerty)

November 30, 2012

Denis Rancourt

Defendant
(and Moving Party)

INDEX OF FACTUM

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

MOVING PARTY'S (DEFENDANT'S) FACTUM

(Refusals Motion – "Champerty")

PART I – INTRODUCTION

1. The University of Ottawa is entirely funding the plaintiff in her private litigation, and the plaintiff seeks proceeds from the action (awarded damages of $125,000) to be given to a University of Ottawa scholarship fund.

2. Following the University's disclosure that it is funding the plaintiff's litigation, the defendant brought the instant motion to stay or dismiss the action on the ground that it is vexatious or is otherwise an abuse of process ("champerty motion").

3. In particular, the grounds are that the funding arrangement between the plaintiff and the University constitutes champerty and/or maintenance, and that the motives for the said arrangement are improper, that the litigation itself is for the improper purpose of stigmatizing and silencing the defendant.

PART II – BACKGROUND

A. Background of pleadings

4. The private $1 million defamation action was filed on June 23, 2011. The Plaintiff, University of Ottawa Assistant Professor Joanne St. Lewis, alleges that she and University of Ottawa President Allan Rock were defamed at law by the Defendant, former University of Ottawa Professor Denis Rancourt, in a February 11, 2011 blogpost on the Defendant's "U of O Watch" blog.

Statement of Claim, Defendant's motion record, Tab 7

5. The Defendant's position is that his blogpost is part of his public participation in a free and democratic society and that there is no defamation at law. He advances the defences of limitation, fair comment, responsible reporting, and a constitutional defence that a statutory government-funded institution cannot by proxy sue an individual for defamation.

Statement of Defence, Defendant's motion record, Tab 8

B. Defendant's champerty motion

6. On October 25, 2011 the University of Ottawa, a non-party, disclosed that it is entirely funding the Plaintiff's costs in the private litigation in which the Plaintiff seeks awarded damages of $125 thousand to be given to a University of Ottawa scholarship fund.

7. On January 5, 2012, following several Plaintiff's motions and an unsuccessful Mandatory Mediation, the Defendant served and filed the instant motion on the ground that it is vexatious or is otherwise an abuse of process ("champerty motion").

Notice of Motion, Defendant's motion record, Tab 1
Affidavit of Denis Rancourt, affirmed January 16, 2012, Motion record Tab 2
Affidavit of Denis Rancourt, affirmed April 23, 2012, Motion record Tab 3
Affidavit of Denis Rancourt, affirmed May 23, 2012, Motion record Tab 4

8. The Defendant cross-examined witness Robert Giroux on April 18, 2012, and cross-examined four affiants on April 18, 2012 (Allan Rock), April 23, 2012 (Joanne St. Lewis, and Bruce Feldthusen), and April 24, 2012 (Céline Delorme). The Plaintiff chose to not cross-examine the Defendant on his affidavits and first informed the Defendant of this choice on April 24, 2012, after the Defendant had made all his scheduled examinations.

Transcripts of examinations, Defendant's motion record, Tabs 11-15

PART III – PRELIMINARY MATTER – ISSUE FOR TRIAL

9. As a preliminary matter, the defendant will argue that the issue of maintenance and champerty in the action should be disposed of by trial, pursuant to Rules 37.13(2)(b) and 37.13(3).

10. When the paper record in a motion contains conflicting material evidence, justice is served by directing the issue to trial.

***Rules of Civil Procedure*, Rule 37.13; [BOA, Tab 26]**
Roach v. Pinnock, 2004 canLII 18719, (ONSC), paras. 71, 74, 111-113; [BOA, Tab 11]
1196303 Ontario v. Glen Groves Suites, 2012 ONSC 758, para. 14; [BOA, Tab 12]

11. Credibility and conflicting material evidence are central features of the determination(s) of champerty and/or maintenance in the instant case. The said determination(s) cannot justly be made from the paper record.

12. A main conflict in the paper record evidence is that: The President of the University affirmed that his motives for funding the plaintiff's litigation were proper; whereas evidence shows the president's animosity and improper motives towards the defendant, continuing after the President dismissed the defendant from his tenured Full Professorship on April 1, 2009.

Transcript, cross-examination of Allan Rock, Motion record, Tab 16 (vol. 3)
Transcript, cross-examination of Joanne St. Lewis, Motion record, Tab 17 (vol. 3)
Transcript, cross-examination of Bruce Feldthusen, Motion record, Tab 18 (vol. 3)

Defendant's motion record, vol. 1, p. 247 (under tab 3-F) (and exhibit 1 on examination)
Defendant's motion record, vol. 1, p. 249 (under tab 3-G) (and exhibit 2 on examination)
Defendant's motion record, vol. 1, p. 264 (under tab 3-J) (and exhibit C on examination)
Defendant's motion record, vol. 1, p. 276 (under tab 4, exhibit B)
Defendant's motion record, vol. 1, p. 278-292 (under tab 3, exhibits C to I)

13. A second main conflict in the paper record evidence is that: The plaintiff affirms that the motive for her litigation is proper, yet evidence points to improper motives for her funded litigation.

Transcript, cross-examination of Joanne St. Lewis, Motion record, Tab 17 (vol. 3)
Transcript, cross-examination of Allan Rock, Motion record, Tab 16 (vol. 3)
Transcript, cross-examination of Bruce Feldthusen, Motion record, Tab 18 (vol. 3)
Statement of Claim, para. 60, Motion record vol.1 p. 322, Tab 7
Defendant's motion record, vol. 1, p. 220 (under tab 3, exhibit A)
Defendant's motion record, vol. 1, p. 222-3 (under tab 3, exhibit B)
Affidavit affirmed January 16, 2012, Motion record Tab 2, paras. 44-50.
Affidavit exhibits Q to V, Motion record vol.1 p. 158-182.

PART IV – PRELIMINARY MATTER – AFFIDAVITS

14. The defendant (moving party) filed three affidavits in support of the instant motion.

Affidavit of Denis Rancourt, affirmed January 16, 2012, Motion record Tab 2
Affidavit of Denis Rancourt, affirmed April 23, 2012, Motion record Tab 3
Affidavit of Denis Rancourt, affirmed May 23, 2012, Motion record Tab 4

<u>January 16, 2012 affidavit</u>

15. The said January 16, 2012 affidavit was served on January 16, 2012, prior to any cross-examinations by any party. The opposing parties chose to not cross-examine the defendant on his January 16, 2012 affidavit.

April 23, 2012 affidavit

16. The said April 23, 2012 affidavit was duly served to both opposing parties on April 23, 2012, pursuant to an order by Justice Beaudoin.

St. Lewis v. Rancourt, Endorsement at Case Conference, April 2, 2012, para. 7; [BOA, Tab 18]

Court Transcript, May 4, 2012, p. 1 lines 20-26, p. 2-3; Motion record Tab 10 (vol.1)

May 23, 2012 affidavit

17. The said May 23, 2012 affidavit was served on May 24, 2012, after cross-examinations had occurred.

Affidavit of service, Motion record Tab 6 (vol. 1)

18. Justice Beaudoin directed that the admissibility of the said May 23, 2012 affidavit would be considered at the hearing of the champerty motion.

Court Transcript, May 4, 2012, p. 30-32; Motion record Tab 10 (vol.1)
***St. Lewis v. Rancourt*, Case Conference Endorsement, May 4, 2012, para. 3; [BOA, Tab 19]**

19. The said May 23, 2012 affidavit contains relevant material evidence for the defendant's case in the champerty motion. The said material evidence became available as a result of a labour arbitration proceeding having hearing dates May 14-17, 2012. The said material evidence was not available before the said hearing dates and was served as soon as it became available. The defendant had advised the Court and the parties starting as early as April 23, 2012 that the said evidence would become available in May 2012, and that he would serve it as soon as it became available.

Affidavit of Denis Rancourt, affirmed April 23, 2012, paras. 14-16, Motion record Tab 3 (vol.1)
Court Transcript, May 4, 2012, p. 30-32; Motion record Tab 10 (vol.1)
Affidavit of Denis Rancourt, affirmed May 23, 2012, paras. 4-9, Motion record Tab 4 (vol.1)
Affidavit exhibit A, Motion Record vol. 1 p. 274 (under tab 4)

20. The material evidence of the said May 23, 2012 affidavit responds to the opposing parties' witnesses refusing, on incorrect grounds of relevance, to answer all properly posed questions about improper motives for entering into the maintenance and champertous agreement, and it could not have been filed earlier, and it is relevant. It only became available at the labour arbitration hearings of May 14-17, 2012.

Transcript, cross-examination of Robert Giroux, Motion record, Tab 15 (vol. 2)

Transcript, cross-examination of Joanne St. Lewis, Motion record, Tab 17 (vol. 3)

Transcript, cross-examination of Allan Rock, Motion record, Tab 16 (vol. 3)

Affidavit exhibit A, Motion Record vol. 1 p. 274 (under tab 4)

21. Granting leave to accept the said May 23, 2012 affidavit would not result in non-compensable prejudice that could not be addressed by costs and/or terms and/or adjournment.

22. The test for accepting the said May 23, 2012 affidavit is met.

Rules of Civil procedure, Rule 39.02 (2)

***Nolan v. Canada (Attorney General)*, 1997 canLII 12213 (ONSC), paras. 20-23; [BOA, Tab 13]**

***First Capital v. Centrecorp*, 2009 canLII 75631 (ONDC), paras. 9-10; [BOA, Tab 16]**

***Brock Home Improvement Products Inc. v. Corcoran*, 2002 canLII 49425 (ONSC), paras. 6-9; [BOA, Tab 14]**

***Crown Resources Corporation v. National Iranian Oil Company*, 2005 canLII 6053 (ONDC) , paras. 11-12; [BOA, Tab 15]**

PART V – SUMMARY OF THE FACTS – CHAMPERTY AND/OR MAINTENANCE

23. The University of Ottawa is a government funded institution governed by statute, mandated to perform the public roles of education and research. Its head regarding all non-academic matters is the Board of Governors.

An Act respecting Université d'Ottawa, *S.O. 1965, C.137*; [BOA Tab 27]

24. The defendant's "U of O Watch" is highly critical of the University of Ottawa and its management, and has operated since 2007. The defendant was a dismissed from his tenured Full

Professorship at the University of Ottawa in 2009, after Allan Rock's arrival in 2008, despite the defendant's illustrious teaching and research career. (Motion record, vol.1 p.23-79: Affidavit exhibit A)

25. The plaintiff is an assistant professor at the University of Ottawa since 1992 and has never been promoted above this entry level position. (Motion record vol.2 Tab 14: Plaintiff's affidavit) The plaintiff refused to produce any documents about her application for tenure or about promotions. (Transcript, St. Lewis) (Motion record vol.4 Tab 25)

26. The defamation action is directed only at the defendant, not the publisher/broadcaster Blogger.com, not the provider of the defendant's academicfreedom.ca web site, not other individuals who have publicly web re-posted exactly the same February 2011 blogpost article complained of, not others who have written related and/or similar criticisms (including the Student Appeal Centre of the student association), no one except the defendant.

27. The University of Ottawa is fully funding the plaintiff's private litigation, in suing the defendant former professor at the same university, who was dismissed from his tenured full professorship by university president Allan Rock. (Motion record, vol.1 p.152) (January 16, 2012 affidavit)

28. The University has a "CURIE" liability insurance policy to fund litigation to defend professors who are themselves sued for defamation arising out of their work. (Motion record, vol.1 p.203: Affidavit exhibit Y)

29. The University does not have any policy to fund the litigations of professors to sue third parties who are critical and/or defamatory of the professors' works. Such a situation is virtually unknown.

30. In providing a reason for its decision to fund the professor's private defamation lawsuit, the University acknowledges that its funding is "out of the ordinary" and advances that its funding is justified by "your outrageously racist attack" which "alone creates a moral obligation". (Motion record: vol.1 p.152; vol.3 Tab 16 at p.23 lines 3-11 and p.48 lines 2-3)

31. Following the defendant's December 6, 2008 blogpost highly critical of professor St. Lewis' evaluation report about systemic racism at the University, on December 15, 2008, Rock expressed his plan for Rancourt to staff: "With any luck, firing him will get him off campus …". Mr. Rock's animosity towards the defendant is well documented in his known correspondence with his staff. (Motion record vol.1 p. 276) (Motion record, vol.1 p.159-163: Affidavit exhibit Q) (Motion record, vol.1 p.306: Statement of Claim, para.30-31) (Motion record vol.1 p.247, 249, 276)

32. The decision to fund the plaintiff's litigation was made by Allan Rock alone, without consulting anyone, and without seeking approval from the Board of Governors. (Transcript, Rock, p.43-44)

33. Allan Rock testified that, on April 15, 2011, he agreed to fund the plaintiff's litigation "without a cap", without a spending limit. (Transcript, Rock, p.35-36)

34. Allan Rock testified that he agreed to fund the plaintiff's litigation "without a cap", on the spot, in the course of a one-hour meeting held on April 15, 2011, without having read the February 2011 blogpost complained of, in discussion with Joanne St. Lewis and Bruce Feldthusen who both also testified that they had not read the said blogpost. (Transcript, Rock, p.4) (Transcripts, Rock, St. Lewis, Feldthusen)

35. Dean of law Bruce Feldthusen testified that he told the plaintiff prior to April 15, 2011, that the University should fund her lawsuit, and he strongly recommended that the University should fund the plaintiff's litigation to the president, while not having read the February 2011 blogpost complained of.

36. Bruce Feldthusen recommended to the plaintiff that Richard Dearden would be a good choice for counsel.

37. The plaintiff testified that she did not consult any counsel or initiate the lawsuit until after she obtained University funding on April 15, 2012, despite being informed about the blogpost complained of on the same day that it was posted, on February 11, 2011. (Motion record, vol.1 p.174) (Transcript, St. Lewis, p.77-78)

38. The plaintiff consulted only Richard Dearden in selecting her counsel. The plaintiff swears that she consulted the web pages of other counsels but refused to answer who these other counsels were. (Transcript, St. Lewis, p.77-79)

39. The University funding is not based on any insurance or other policy. The funding comes from the general operating budget of the University, administratively controlled by Mr. Rock. Mr. Rock's animosity towards the defendant is well documented in his known correspondence with his staff. (Transcript, Rock, p.38-41) (Motion record vol.1 p.247, 249, 276)

40. The plaintiff's Statement of Claim commits to giving half of punitive damages, up to $125,000., to a scholarship fund that the plaintiff spearheaded as a professional accomplishment, and that is a scholarship fund for the law faculty were Bruce Feldthusen is dean, and where the plaintiff is a professor.

41. Allan Rock has testified that he has nothing in principle against accepting the scholarship lawsuit proceeds money, if it were to materialize: "It is a matter of disinterest to me. I always like to see scholarships funded at the university but it is a matter of disinterest to me whether this Plaintiff in this law suit provides that funding for that purpose." (Transcript, p. 86, lines 4-8)

42. Allan Rock testified that, at the time of his April 15, 2011 decision to fund the plaintiff's private lawsuit, if he had been informed of the plaintiff's intention to give proceeds of the

litigation to a University scholarship, then the said intention to derive proceeds from the litigation would have made no difference to his decision. (Transcript, p.46 lines 1-9, Motion record vol.3 Tab 16)

43. Contrary to the testimonies of Rock and St. Lewis, a direct electronic communication between Allan Rock and the Plaintiff's counsel, Mr. Dearden, without the plaintiff being included in the communication exists which suggests involvement of Allan Rock with the plaintiff's counsel without the knowledge of the plaintiff. (Transcripts) (Motion record vol.1 p.225-231)

44. Allan Rock testified that the plaintiff could not afford the litigation herself, yet dean Feldthusen testified that an Assistant Professor's maximum salary is $85,000 or so. (Transcript, Feldthusen, p. 16)

45. The plaintiff did not initiate an action against the defendant when, in 2008, the defendant wrote a blogpost about the plaintiff which contained all the same professional criticisms of the plaintiff as the 2011 blogpost complained of. (Motion record, vol.1 p.306, 159, 19) (Motion record, p.332-3: Statement of Defence paras.27-28.)

46. The plaintiff testified that she did not read the 2011 blogpost complained of; even after receiving an email describing the said blogpost in highly negative terms ("where he refers to you in derogatory and racist language is really disturbing"), until after she obtained funding for her litigation, in preparing her Statement of Claim. (Motion record vol.1 p.222-3) (Motion record vol.3 Tab 17: Transcript, St. Lewis, p.57 lines 7-13)

47. On learning about the blogpost complained of ("where he refers to you in derogatory and racist language is really disturbing"), the plaintiff had no intention of suing the defendant and wrote to president Allan Rock on February 14, 2011: "Do let me know if you want me to do anything. I will happy to fit into whatever strategy you decide but until then I intend to make no comment." (Motion record vol.1 p.220, and p.222-3)

48. The correspondence to organize the April 15, 2011 meeting between Rock and Feldthusen to decide the funding of the plaintiff's private action suggests that the plaintiff's presence at the said meeting was optional, as a second thought, if she was available. (Motion record vol.4 Tab 24 p.203-208)

49. The plaintiff's Statement of Claim claims no actual damages such as loss of employment, loss of professional advancement, loss of student enrolments, poorer student evaluations, loss of professional opportunities, loss of professional speaking or other invitations, loss of productivity, loss of status, conflicts arising with students or colleagues, etc., yet claims total damages of $1 million.

50. The plaintiff, through her counsel, sternly rejected the defendant's early (May 20, 2011) proposal to initiate informal resolution. (Motion record vol.1 p. 179, affidavit exhibit)

51. When Allan Rock informed the Board of Governors about funding the plaintiff's litigation he had read the Statement of Claim, yet he did not inform the Board that proceeds from the action would be given to the University. (Transcripts, Rock, Giroux)

52. The Chair of the Board of Governors, Mr. Robert Giroux, first learned about the said sharing of the proceeds of the action when he was cross-examined by the defendant on April 18, 2012. On learning the said new information, Mr. Giroux responded: "I would have to think about that and I am not sure just exactly what I would do." (Transcript, Giroux, p.58, p.65-66)

Evidence of Mr. Rock's improper motives towards the defendant

53. Allan Rock directed the suspension, baring from campus, and firing of tenured professor Denis Rancourt. In doing this, the University obtained in December 2008 a psychiatric evaluation of Rancourt without the knowledge or consent of Rancourt, using personal information provided by the University to the psychiatrist. (Motion record vol.1 p.264)

54. Allan Rock refused to answer all cross-examination questions about the said psychiatric evaluation. (Transcript p.123-4, Motion record vol.3 Tab 16) (Motion record vol.1 p.264)

55. Allan Rock testified that he's never been on the defendant's "U of O Watch" blog website, yet in an email to staff dated April 20, 2009, he refers to content from the "U of O Watch" blog as "Rancourt's toxic rants". (Motion record vol.1 p.247) (Transcript, Rock, p.9-10)

56. In response to a positive media article about Rancourt, Rock writes to Feldthusen on April 19, 2009, asking "How best to get the facts out?", as they work to "get the facts out" to the public about their views on Rancourt. (Motion record vol.1 p.249-251)

57. ln 2008, the University ran an extensive covert information gathering campaign against tenured full professor Rancourt, with a hired student who used a false identity and fraudulent methods (Motion record vol.1, p.279-292).

58. In cross-examination, president Rock refused to answer "Mr. Rock, under your mandate as president have you ever paid to obtain recordings or transcripts of any of my various talks or interviews"? (Transcript, Rock, p.114, Q568) President Rock refused to answer all the questions about the said covert information gathering campaign. (Transcript, p.114-115, Motion record vol.3 Tab 16).

PART VI – LAW & AUTHORITIES

LEGAL CONTEXT: MAINTENANCE

Supreme Court of Canada on maintenance

59. The *Supreme Court of Canada* has consistently until present held the same definition of maintenance since 1907, reaffirmed in 1939, and in 1993, as centrally based on intervening "officiously or improperly":

> A person must intervene "officiously or improperly" to be liable for the tort of maintenance. Provision of financial assistance to a litigant by a non-party will not always constitute maintenance. Funding by a relative or out of charity must be distinguished from cases where a person wilfully and improperly stirs up litigation and strife. The society's support was "out of charity and religious sympathy" and so did not constitute maintenance.
>
> ***Young v. Young*, 1993 CanLII 34 (SCC), p.22; [BOA, Tab 1]**

> To be liable for maintenance, a person must intervene "officiously or improperly": *Goodman v. The King*, [1939] S.C.R. 446. Provision of financial assistance to a litigant by a non-party will not always constitute maintenance. Funding by a relative or out of charity must be distinguished from cases where a person wilfully and improperly stirs up litigation and strife: *Newswander v. Giegerich* 1907 CanLII 33 (SCC), (1907), 39 S.C.R. 354.
>
> ***Young v. Young*, 1993 CanLII 34 (SCC), p.155; [BOA, Tab 1]**

60. The latter is a disjunctive condition. The intervening need only be either officious or improper to establish maintenance.

Definition of "trafficking in litigation"

61. "Trafficking in litigation" is a broad concept which is consistent with the *Supreme Court of Canada* definition of maintenance:

> Trafficking in litigation is, by the very use of the word "trafficking" something which is objectionable and may amount to or contribute to an abuse of the process. We think that it is undesirable to try to define in different words what would constitute trafficking in

> litigation. It seems to us to connote unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation. 'Wanton and officious intermeddling with the disputes of others in which they [the funders] have no interest and where that assistance is without justification or excuse' may be a form of trafficking in litigation. [Emphasis added.]
>
> ***Stocznia Gdanska SA v. Latreefers Inc.,* [2000] E.W.J. No. 469 (QL), as cited in: *Operation 1 Inc. v. Phillips,* 2004 CanLII 48689 (ONSC), para. 45; [BOA, Tab 2]**

DETERMINATION OF ABUSE OF PROCESS

62. Abuse of process is a finding made on the totality of the evidence and conduct, not on features in isolation:

> Abuse of the court's process can take many forms and may include a combination of two or more strands of abuse which might not individually result in a stay.
>
> ***Stocznia Gdanska SA v. Latreefers Inc.,* [2000] E.W.J. No. 469 (QL), as cited in: *Operation 1 Inc. v. Phillips,* 2004 CanLII 48689 (ONSC), para. 45; [BOA, Tab 2]**

63. In Ontario all champertous agreements are illegal and contrary to public policy by virtue of an Act that remains in force (entire Act):

> *R.S.O. 1897, Chapter 327*
>
> **An Act respecting Champerty**
>
> His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:
>
> **Definition of Champertors**
>
> 1. Champertors be they that move pleas and suits, or cause to be moved, either by their own procurement, or by others, and sue them at their proper costs, for to have part of the land in variance, or part of the gains. 33 Edw. I.
>
> **Champertous agreements void**
>
> 2. All champertous agreements are forbidden, and invalid. (Added in the Revision of 1897.)
>
> **An Act respecting Champerty, [BOA, Tab 25]**

64. *An Act respecting Champerty* has force of law in Ontario.

> ***Galati v. Edwards Estate*, [1998] O.J. No. 4128, paras. 9, 22; [BOA, Tab 3]**
>
> ***Robinson v. Cooney*, [1999] O.J. No. 1341, para. 18; [BOA, Tab 4]**

65. Champerty rarely admits any just cause or excuse:

> A review of the common law cases makes it clear that champerty was regarded as a species of maintenance for which the common law would rarely admit any just cause or excuse.
>
> ***Galati v. Edwards Estate*, [1998] O.J. No. 4128, para. 18; [BOA, Tab 3]**

66. An action involving maintenance or champerty may be dismissed as an abuse of process:

> An action that involves maintenance or champerty may be dismissed as an abuse of process. [Emphasis added.]
>
> ***Adi v. Datta*, 2011 ONSC 2496, para. 53; [BOA, Tab 5]**

67. Staying an action for maintenance or champerty, as an abuse of process, is a final decision.

> ***Aacon Buildings v. City of Brampton*, 2010 ONCA 773 (canLII), [BOA, Tab 17]**

RELEVANT FACTORS IN DETERMINING CHAMPERTY AND/OR MAINTENANCE

A. Champerty requires maintenance

68. Without maintenance there can be no champerty.

> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 26; [BOA, Tab 6]**

B. Motive is determinative

69. Propriety of motive is a relevant and determinative consideration in establishing maintenance:

> The courts have made clear that a person's motive is a proper consideration and, indeed, determinative of the question whether conduct or an arrangement constitutes maintenance or champerty. It is only when a person has an improper motive which

> motive may include, but is not limited to, "officious intermeddling" or "stirring up strife", that a person will be found to be a maintainer. [Emphasis added.]
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 27; [BOA, Tab 6]**

> First, the involvement must be spurred by some improper motive.
>
> ***Metzler Investment v. Gildan Activewear*, 2009 ONSC 41540, para. 44; [BOA, Tab 7]**

> The objection to the assistance is that the person providing it is doing so without a proper purpose and is acting maliciously or to stir up strife. If there is an allegation of maintenance, the court must carefully examine the conduct of the parties and the propriety of the motive of the alleged maintainer. [Emphasis added.]
>
> ***Adi v. Datta*, 2011 ONSC 2496, para. 54; [BOA, Tab 5]**

70. Justification or excuse for funding the litigation is relevant in establishing maintenance and champerty:

> Maintenance is directed against those who, for an improper motive, often described as wanton or officious intermeddling, become involved with disputes (litigation) of others in which the maintainer has no interest whatsoever and where the assistance he or she renders to one or the other parties is without justification or excuse. [Emphasis added]
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 26; [BOA, Tab 6]**

71. In contemporary maintenance and champerty, contingency fee agreements are tolerated when the benefit from access to justice outweighs the potential for abuse:

> There can be no doubt that from a public policy standpoint, the attitude towards permitting the use of contingency fee agreements has undergone enormous change over the last century. The reason for the change in attitude is directly tied to concerns about access to justice.
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 55; [BOA, Tab 6]**

72. Reliance on applicable policies, rules, and/or statutes can be an acceptable justification and proper motive for funding a litigation.

> ***Lorch v. McHale*, 2008 CanLII 35685 (ON SC), para. 32; [BOA, Tab 8]**

C. Nature of the agreement is central

73. The nature of the agreement and all facts which inform the nature of the agreement to fund the litigation are relevant to establishing motive in maintenance and champerty:

> The motive can be inferred from the very nature of the agreement itself.
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 48; [BOA, Tab 6]**

74. The quantum of funding is a defining feature of the agreement. It informs the propriety of motive of the maintainer via administrative and/or contractual and/or policy and/or statutory limits or oversights on spending.

> A large mathematical disproportion between any pre-existing financial interest and the potential profit of funders may in particular cases contribute to a finding of abuse but is not bound to do so.
>
> ***Stocznia Gdanska SA v. Latreefers Inc.,* [2000] E.W.J. No. 469 (QL), as cited in:**
> ***Operation 1 Inc. v. Phillips,* 2004 CanLII 48689 (ONSC), para. 45; [BOA, Tab 2]**

> When considering the propriety of the motive of a lawyer who enters into a contingency fee agreement, a court will be concerned with the nature and the amount of the fees to be paid to the lawyer in the event of success. [Emphasis added.]
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), paras. 76, also 3-4, and 84; [BOA, Tab 6]**

75. The prospect of "double recovery," from the maintainer as well as costs recovered from the defendant in the action, is a relevant consideration is establishing maintenance and champerty.

> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 79; [BOA, Tab 6]**

D. Prior intent of the litigant is a defining consideration

76. Intent to litigate prior to third-party funding is a defining consideration in establishing maintenance and champerty:

> Whatever its historical origin, the authorities, both English and Canadian, have consistently treated champerty as a form of maintenance requiring proof not only of an

> agreement to share in the proceeds but also the element of encouraging litigation that the parties would not otherwise be disposed to commence. [Emphasis added.]
>
> ***Buday v. Locator of Missing Heirs Inc.*, 1993 CanLII 961 (ON CA), 5th-last para.; [BOA, Tab 9]**

> In cases of champerty - such as this - the question whether the aggrieved party had shown an interest in commencing litigation, or would have been likely to do so without the officious intermeddling of the maintainer, may be material on the issue of abuse of process.
>
> ***Operation 1 Inc. v. Phillips,* 2004 CanLII 48689 (ONSC), para. 53; [BOA, Tab 2]**

E. Vulnerability of the funded litigant is an overriding consideration

77. Vulnerability of the funded litigant is relevant to a determination of abuse in the relationship with the maintainer, and is a central public policy concern in maintenance and champerty:

> The overriding purpose of the common law of champerty has always been to protect the administration of justice from abuse by those who wrongfully maintain litigation. Its origins are rooted in a policy directed to ensuring a fair resolution of disputes and protecting vulnerable litigants from abuse. The protection afforded by the common law is advanced by looking to the propriety of the motives of those who become involved in litigation. [Emphasis added.]
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 47; [BOA, Tab 6]**

> One of the originating policies in forming the common law of champerty was the protection of vulnerable litigants.
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 76; [BOA, Tab 6]**

PART VII – APPLICATION OF THE LAW TO THE FACTS

78. The impropriety of the maintenance and champerty in the instant case is evident:

(a) A university funds a vulnerable assistant professor employee to sue its main public critic and mouton noir,

(b) with unlimited funds and no conditions,

(c) where the said assistant professor showed no prior intent to sue,

(d) where the University chooses her counsel for her,

(e) where the University communicates directly with her counsel without the plaintiff's knowledge,

(f) where the University admits the "out of the ordinary" funding but purports to justify itself by alleging an "outrageously racist attack" and a "moral obligation",

(g) while condoning a *prima facie* violation of Ontario's *An Act respecting Champerty*, and

(h) while not disclosing the said champerty to its Board of Governors until forced to do so under cross-examination one year later.

79. This, in a context where the administrative public officer responsible for the decision to fund the litigation:

(a) has shown documented animosity to his staff towards the defendant,

(b) had a psychiatric evaluation done of the defendant without the defendant's knowledge or consent using the defendant's personal information in firing the defendant from his tenured Full Professorship,

(c) allowed a long term covert and fraudulent campaign of information gathering against the defendant which used a student who adopted a false identity,

(d) sought ways with Feldthusen to "get the facts out" regarding their view of the defendant, and

(e) sought ways to "get him off campus" <u>after his firing</u>.

80. This occurred where the sharing of the litigation proceeds to the University scholarship fund is for a scholarship spearheaded by the plaintiff as a personal professional accomplishment; a scholarship in the law faculty where the plaintiff is employed, and where Mr. Feldthusen who recommended the funding of the litigation is dean of the faculty.

81. The defendant has fought against injustice and racism all his life, whereas the litigation is intended to stigmatize the defendant, restrict his freedom of expression in a matter of public interest, and intimidate him from speaking out against a government body's practices regarding racism. The University's collateral use of "your outrageously racist attack" and "moral obligation" as attempted justifications for its maintenance are particularly of concern, where the University uses anticipated emotional responses rather than addressing the established meaning of the racial political term "house negro" which was defined by civil rights icon Malcolm X.

<u>Abuse of process by a government body</u>

82. Beyond the traditional maintenance and/or champerty considerations, the action is improper as an abuse of process for the following additional reason.

83. Ontario jurisprudence recognises that a large inequality of resources in defamation litigation creates an unjust imbalance in the legal process, and that this in turn creates an undue quashing of alleged or actual defamatory criticisms of government bodies, while preserving the individual employee's right to private litigation.

Township of Montague v. Page, 2006 canLII 2192 (ONSC); [BOA Tab 23]

Town of Halton Hills v. Kerouac, 2006 canLII 12970 (ONSC); [BOA Tab 24]

84. The University of Ottawa, in all its funding/financial decisions is a government body mandated by government, through statute, to provide public education and research.

An Act respecting Université d'Ottawa, *S.O. 1965, C.137*; [BOA Tab 27]

85. As such, the university president holds a public office and is open to the tort of misfeasance in public office.

***Freeman-Maloy v. Marsden*, 2006 canLII 9693 (ONCA); [BOA Tab 21]**

86. The defendant submits that the instant action is an attempt, by proxy, to circumvent the public policy prohibition of a government entity to sue a private citizen for defamation; and that it would not be reasonable to on the one hand disallow a government body to sue for defamation aimed against the government body, while on the other hand allowing the said government body to fund an employee's litigation to sue over the same alleged defamatory material. The defendant submits that such funding in itself would be maintenance that constitutes an abuse of process, and must thereby be carefully examined.

87. The instant case has all the characteristics of a SLAPP, with the special feature that an employee is fronting the action. A recent Quebec court of appeal decision explained that in examining the circumstances of an alleged SLAPP, the trier of fact can consider indicators that taken together indicate impropriety.

> Three aspects of the record as it stands, considered together, indicate that the action "may be improper" in this way: the motive for the action as revealed by the demand letter; the fact that the action was directed only at Mr. Michaud; and the fact that the appellants will give any funds they receive as compensation for the alleged defamation to charity.
>
> ***Acadia Subaru et al. v. Michaud*, 2011 QCCA 1037 (canLII), para.80; [BOA Tab 22]**

88. Impropriety of motive, in turn, is a determinative consideration in establishing maintenance, even in the absence of champerty.

89. The defendant submits that the facts are amply sufficient to establish maintenance and champerty, in direct violation of the Ontario champerty statute, and that the government entity involvement is a further serious concern. The defendant respectfully submits that, with all factors taken together, the case for an abuse of process to stay the action is largely made.

PART VIII – ORDER SOUGHT

90. The moving party respectively requests:

(a) That the action be stayed and/or dismissed for abuse of process;

(b) Alternatively, that the champertous maintenance be ordered terminated, with reimbursement of funds from the plaintiff to the University, and that the punitive damages paragraphs in the Statement of Claim be struck out.

Costs and other

91. The costs of this motion on an appropriate scale; and

92. Such further and other relief as the Defendant may advise and this Honourable Court deems just.

Date: November 30, 2012

_____

Denis Rancourt
(Defendant)

E-mail: denis.rancourt@gmail.com

Joanne St. Lewis (Plaintiff) – and – Denis Rancourt (Defendant)

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OTTAWA

MOVING PARTY'S (DEFENDANT'S) FACTUM
(Motion to Stay the Action – Maintenance and Champerty)

Denis Rancourt
(no fax)
Email: denis.rancourt@gmail.com

Defendant

Fax number of person on whom document is to be served:
613-788-3430 (Richard Dearden, for the plaintiff)
613-230-8842 (Peter Doody, for the University of Ottawa)

Court File No.: _____

COURT OF APPEAL FOR ONTARIO

Tab 16-1

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

APPELLANT'S CERTIFICATE

(Appeal from the order of Justice Robert Smith, dated March 13, 2013)

April 12, 2013

Denis Rancourt
(Appellant)

The appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. Exhibit numbers: All

2. The affidavit evidence of: All (Denis Rancourt, Joanne St. Lewis, Celine Delorme, Allan Rock, Bruce Feldthusen, Robert Giroux)

3. The oral evidence of: N/A

4. The transcripts of cross-examinations of affiants and witnesses: All (Joanne St. Lewis, Celine Delorme, Allan Rock, Bruce Feldthusen, Robert Giroux)

5. Opposing parties' documents produced prior to cross-examinations: All those included by the defendant in the motion record of the main motion appealed from.

6. Court transcript of the May 4, 2012 case conference (Justice Beaudoin)

7. Court transcript of the June 20, 2012 refusals motion hearing (Justice Beaudoin)

8. Court transcript of the July 24, 2012 recusal request hearing (Justice Beaudoin)

9. Court transcript of the December 13, 2012 main motion hearing (Justice Smith)

<u>Lower court evidence specifically regarding reasonable apprehension of bias</u>

10. Court transcript of the February 8, 2012 case conference (Justice Beaudoin)

11. The July 30, 2012 affidavit of Denis Rancourt, with all affidavit exhibits (filed in support of the defendant's reasonable apprehension of bias motion)

DATED: April 12, 2013

Denis Rancourt
Appellant

Email: denis.rancourt@gmail.com

TO: Richard G. Dearden
Counsel for the Plaintiff
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

AND TO: Peter Doody
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JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.:

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

APPELLANT'S CERTIFICATE

Denis Rancourt
(no fax)
Email: denis.rancourt@gmail.com

Appellant

Court File No. C-56905

COURT OF APPEAL FOR ONTARIO

Tab 16-2

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

and

UNIVERSITY OF OTTAWA

Rule 37 Affected Party
(Respondent)

RESPONDENTS' JOINT CERTIFICATE RESPECTING EVIDENCE
(Appeal from the order of Justice Robert Smith, dated March 13, 2013)

The Respondents Joanne St. Lewis and the University of Ottawa (Rule 37 Affected Party in the decision appealed from) confirm the Appellant's Certificate dated April 12, 2013, except for the following:

ADDITIONS

1. The transcript of examination under Summons to Witness of Robert Giroux held on April 18, 2012.

2. The Case Conference Endorsement dated February 8, 2012 is required for the appeal.

3. The Reasons for Decision of Justice Smith dated May 9, 2012 (Defendant's (Appellant's) Leave to Appeal the February 8, 2012 decision of Justice Beaudoin (refusing to allow the Defendant to bring an "open court" motion to allow members of the public to attend the cross-examinations on affidavits that were filed in the Defendant's Champerty motion) are required for the Appeal.

4. The Order of Justice Smith dated June 6, 2012 awarding costs against the Defendant (Appellant) in favour of the Plaintiff and the Rule 37 Affected Party (Respondents) for the Defendant's (Appellant's) unsuccessful motion for leave to appeal the February 8, 2012 decision of Justice Beaudoin is required for the appeal.

5. The Case Conference Endorsement dated April 2, 2012 is required for the appeal.

6. The Case Conference Endorsement dated May 4, 2012 and the Amended Case Conference Endorsement dated June 19, 2012 are required for the appeal.

7. The court transcript of the September 27, 2012 Case Conference before Justice Smith is required for the appeal.

8. The Reasons for Decision of Justice Beaudoin dated August 2, 2012 (Defendant's (Appellant's) refusals motion regarding the cross-examinations on affidavits of the University of Ottawa witnesses in the Defendant's (Appellant's) Champerty Motion heard June 20, 2012) are required for the appeal.

9. The Reasons for Decision of Justice Smith dated September 6, 2012 (Defendant's (Appellant's) refusals motion regarding the cross-examination on an affidavit of Joanne St. Lewis in the Defendant's (Appellant's) Champerty Motion heard July 27, 2012) are required for the appeal.

10. The court transcript of the July 27, 2012 hearing before Justice Smith (Defendant's (Appellant's) refusals motion regarding the cross-examination on an affidavit of Joanne St. Lewis in the Defendant's (Appellant's) Champerty Motion) is required for the appeal.

11. The Order of Justice Smith dated December 11, 2012 awarding costs against the Defendant (Appellant) in favour of the University of Ottawa for the Defendant's (Appellant's) unsuccessful Champerty refusals motion (heard June 20, 2012 and July 27, 2012) is required for the appeal.

12. The Order of Justice Smith dated October 23, 2012 awarding costs against the Defendant (Appellant) in favour of the Plaintiff for the Defendant's (Appellant's) unsuccessful Champerty refusals motion (heard June 20, 2012 and July 27, 2012) is required for the appeal.

13. The Reasons for Decision of Justice Annis dated November 29, 2012 and the Amended Reasons for Decision of Justice Annis dated January 2, 2013 (Defendant's (Appellant's) Leave to Appeal three interlocutory decisions – the decision of Justice Beaudoin dated

June 20, 2012, the "decision" of Justice Smith by letter of July 31, 2012 and the decision of Justice Smith dated September 6, 2012 – heard November 15, 2012) are required for the appeal.

14. The court transcript of the November 15, 2012 hearing before Justice Annis (Defendant's (Appellant's) Leave to Appeal three interlocutory decisions – the decision of Justice Beaudoin dated June 20, 2012, the "decision" of Justice Smith by letter of July 31, 2012 and the decision of Justice Smith dated September 6, 2012) is required for the appeal.

15. The Reasons for the Costs Decision of Justice Annis dated January 23, 2013 and Amended Reasons for the Costs Decision of Justice Annis dated February 12, 2013 ((Defendant's (Appellant's) Leave to Appeal three interlocutory decisions – the decision of Justice Beaudoin dated June 20, 2012, the "decision" of Justice Smith by letter of July 31, 2012 and the decision of Justice Smith dated September 6, 2012) are required for the appeal.

16. The Order of Justice Annis dated January 23, 2013 awarding costs against the Defendant (Appellant) for the Defendant's unsuccessful motion for leave to appeal three interlocutory decisions (the decision of Justice Beaudoin dated June 20, 2012, the "decision" of Justice Smith by letter of July 31, 2012 and the decision of Justice Smith dated September 6, 2012) is required for the appeal.

17. The Defendant's (Appellant's) Notice of Application dated January 4, 2013 (Leave to Appeal to the Supreme Court of Canada the decision of Justice Annis dated November 29, 2012) is required for the appeal.

18. The Defendant's (Appellant's) Memorandum of Argument dated January 4, 2013 (Defendant's (Appellant's) Application for Leave to Appeal to the Supreme Court of Canada the decision of Justice Annis dated November 29, 2012) is required for the appeal.

19. The Reasons for Decision of Justice Smith dated March 13, 2013 (Defendant's Champerty Motion heard December 13, 2012) are required for the appeal.

DELETIONS

20. Robert Giroux did not swear an affidavit. Robert Giroux was examined pursuant to a Summons to Witness served by the Defendant (Appellant).

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

**RESPONDENTS' JOINT
CERTIFICATE RESPECTING EVIDENCE**

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JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.: C56905

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

APPEAL BOOK AND COMPENDIUM OF THE APPELLANT

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Appellant